

MONTANA LEGISLATIVE HISTORY

Chapter 596 19 93

Bill H _____ S 430

Original bill & history ☒ C

H. Committee on Business & Economic Development

S. Committee on Business & Industry

Hearing Date(s) Apr 06 ☒ C

Hearing Date(s) Mar 25 ☒ C

_____ ☐ C

Mar 26 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Apr 06 ☒ C

Mar 26 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

	TRANSMITTED TO HOUSE		
3/27	REVISED FISCAL NOTE REQUESTED		
3/29	REFERRED TO TAXATION		
3/29	FIRST READING		
4/02	HEARING		
4/03	REVISED FISCAL NOTE RECEIVED		
4/05	REVISED FISCAL NOTE PRINTED		
4/07	COMMITTEE REPORT—BILL CONCURRED		
4/12	2ND READING CONCURRED	74	22
4/13	3RD READING CONCURRED	76	23
	RETURNED TO SENATE		
4/17	SIGNED BY PRESIDENT		
4/20	SIGNED BY SPEAKER		
4/20	TRANSMITTED TO GOVERNOR		
4/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 488		
	EFFECTIVE DATE: 04/22/93		

SB 429 INTRODUCED BY GAGE

REQUIRE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
TO GIVE PRIORITY TO GRANT REQUESTS FROM BOARD OF OIL AND
GAS CONSERVATION

BY REQUEST OF SENATE TAXATION COMMITTEE

3/05	INTRODUCED		
3/05	REFERRED TO TAXATION		
3/05	FIRST READING		
3/19	HEARING		
3/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/24	2ND READING PASSED	41	8
3/25	3RD READING PASSED	43	6
	TRANSMITTED TO HOUSE		
3/26	REFERRED TO TAXATION		
3/26	FIRST READING		
3/29	REVISED FISCAL NOTE REQUESTED		
3/31	HEARING		
4/01	COMMITTEE REPORT—BILL CONCURRED		
4/02	2ND READING CONCURRED	59	35
4/02	REVISED FISCAL NOTE RECEIVED		
4/05	3RD READING CONCURRED	64	36
4/06	REVISED FISCAL NOTE PRINTED		
	RETURNED TO SENATE		
4/14	SIGNED BY PRESIDENT		
4/14	SIGNED BY SPEAKER		
4/15	TRANSMITTED TO GOVERNOR		
4/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 430		
	EFFECTIVE DATE: 07/01/93		

SB 430 INTRODUCED BY CHRISTIAENS, ET AL.

GENERALLY REVISE LAWS RELATING TO INSURERS
BY REQUEST OF STATE AUDITOR

3/08	INTRODUCED		
3/08	REFERRED TO BUSINESS & INDUSTRY		
3/08	FIRST READING		
3/08	FISCAL NOTE REQUESTED		
3/13	FISCAL NOTE RECEIVED		
3/16	FISCAL NOTE PRINTED		
3/25	HEARING		

SB 431	1993 HISTORY AND FINAL STATUS	182	
3/27	COMMITTEE REPORT—BILL PASSED		
3/29	2ND READING PASSED	39	8
3/30	3RD READING PASSED	45	5
	TRANSMITTED TO HOUSE		
3/31	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
3/31	FIRST READING		
4/06	HEARING		
4/08	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/12	2ND READING CONCURRED	89	9
4/13	3RD READING CONCURRED	80	17
	RETURNED TO SENATE WITH AMENDMENTS		
4/16	2ND READING AMENDMENTS CONCURRED	49	0
4/17	3RD READING AMENDMENTS CONCURRED	39	0
4/23	SIGNED BY PRESIDENT		
4/24	SIGNED BY SPEAKER		
4/24	TRANSMITTED TO GOVERNOR		
4/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 596		
	EFFECTIVE DATE: 10/01/93		
SB 431	INTRODUCED BY AKLESTAD, ET AL.		
	REVISE TAXATION OF LIQUEFIED PETROLEUM GAS AND COMPRESSED NATURAL GAS FOR USE IN MOTOR VEHICLES		
3/10	INTRODUCED		
3/10	REFERRED TO TAXATION		
3/10	FIRST READING		
3/10	FISCAL NOTE REQUESTED		
3/15	FISCAL NOTE RECEIVED		
3/15	FISCAL NOTE PRINTED		
3/24	HEARING		
3/25	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/26	2ND READING PASSED	49	0
3/27	3RD READING PASSED	46	2
	TRANSMITTED TO HOUSE		
3/27	REVISED FISCAL NOTE REQUESTED		
3/29	REFERRED TO TAXATION		
3/29	FIRST READING		
4/02	REVISED FISCAL NOTE RECEIVED		
4/02	REVISED FISCAL NOTE PRINTED		
4/05	HEARING		
4/07	TABLED IN COMMITTEE		
4/24	MOTION FAILED TO TAKE FROM COMMITTEE AND PLACE ON 2ND READING	50	42
SB 432	INTRODUCED BY TOWE		
	REVISE EQUALIZATION OF SCHOOL FUNDING BY REQUEST OF OFFICE OF PUBLIC INSTRUCTION		
3/11	INTRODUCED		
3/12	FIRST READING		
3/12	FISCAL NOTE REQUESTED		
3/12	REFERRED TO SCHOOL FINANCE SELECT COMMITTEE		
3/22	HEARING		
3/22	FISCAL NOTE RECEIVED		
3/22	FISCAL NOTE PRINTED		
3/31	MISSED TRANSMITTAL DEADLINE		

SENATE BILL NO. 430

INTRODUCED BY CHRISTIAENS, WATERMAN, WILSON, KOEHNKE,
COCCHIARELLA, TUSS, T. NELSON, HARDING
BY REQUEST OF THE STATE AUDITOR

IN THE SENATE

MARCH 8, 1993 INTRODUCED AND REFERRED TO COMMITTEE
 ON BUSINESS & INDUSTRY.

 FIRST READING.

MARCH 27, 1993 COMMITTEE RECOMMEND BILL
 DO PASS. REPORT ADOPTED.

MARCH 29, 1993 PRINTING REPORT.

 SECOND READING, DO PASS.

MARCH 30, 1993 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 45; NOES, 5.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 31, 1993 INTRODUCED AND REFERRED TO COMMITTEE
 ON BUSINESS & ECONOMIC DEVELOPMENT.

 FIRST READING.

APRIL 8, 1993 COMMITTEE RECOMMEND BILL BE
 CONCURRED IN AS AMENDED. REPORT
 ADOPTED.

APRIL 12, 1993 SECOND READING, CONCURRED IN.

APRIL 13, 1993 THIRD READING, CONCURRED IN.
 AYES, 80; NOES, 17.

APRIL 14, 1993 RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 16, 1993 SECOND READING, AMENDMENTS
 CONCURRED IN.

APRIL 17, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

APRIL 21, 1993

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

Senate BILL NO. **430**

INTRODUCED BY *Christiane Watkinson Wilson*

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO INSURERS; PROVIDING REGULATION OF BUSINESS TRANSACTIONS WITH PRODUCER-CONTROLLED INSURERS; PROVIDING CREDIT FOR REINSURANCE; REGULATING MANAGING GENERAL AGENTS; PROVIDING FOR INTERSTATE EXCHANGE OF INSURER REGULATORY INFORMATION; REGULATING REINSURANCE INTERMEDIARIES; REVISING THE LAWS REGULATING INSURANCE HOLDING COMPANIES, LIFE AND HEALTH AND CASUALTY AND PROPERTY INSURANCE GUARANTY ASSOCIATIONS, INSURER FINANCIAL EXAMINATIONS, RISK RETENTION GROUPS, AND INSURER SUPERVISION, REHABILITATION, AND LIQUIDATION; PROVIDING FOR AN ANNUAL ACCREDITATION FEE; AMENDING SECTIONS 33-1-401, 33-2-501, 33-2-532, 33-2-533, 33-2-701, 33-2-708, 33-2-1111, 33-2-1114, 33-2-1115, 33-2-1201, 33-2-1331, 33-2-1342, 33-2-1346, 33-10-105, 33-10-111, 33-10-114, 33-10-201, 33-10-202, 33-10-203, 33-10-210, 33-10-217, 33-10-218, 33-10-224, 33-11-103, 33-11-104, 33-11-105, 33-11-108, 33-11-109, AND 33-22-804, MCA; AND REPEALING SECTIONS 33-1-403, 33-1-412, 33-2-1205, AND 33-10-229, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because the department of insurance is granted authority to adopt rules for the administration and enforcement of laws regulating reinsurance intermediaries, managing general agents, holding company systems, insurer financial audits, and examinations and standards for companies considered to be in hazardous financial condition.

The legislature contemplates that rules adopted by the department should, at a minimum, endeavor to create an insurer regulatory structure in Montana that is reasonable and effective, that substantially resembles the model regulatory structure developed by the national association of insurance commissioners, that is eligible for national accreditation to enable insurers domiciled in Montana to do business in this state and other states with a maximum of financial stability and a minimum of regulatory difficulty, and that encourages the startup and expansion of insurance companies domiciled in Montana.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 27]:

(1) "Accredited state" means a state in which the department of insurance or regulatory agency has qualified as meeting the minimum financial regulatory standards

1 promulgated and established from time to time by the
2 national association of insurance commissioners.

3 (2) "Actuary" means a person who is a member in good
4 standing of the American academy of actuaries.

5 (3) "Captive insurer" means:

6 (a) an insurer that is owned by another entity and
7 whose exclusive purpose is to insure risks of the parent
8 entity and its affiliates; or

9 (b) in the case of a group or association, an insurer
10 that is owned by the member insureds and whose exclusive
11 purpose is to insure risks to member insureds and their
12 affiliates.

13 (4) "Control" or "controlled" has the meaning defined
14 in 33-2-1101.

15 (5) "Controlled insurer" means an authorized insurer
16 that is controlled, directly or indirectly, by a producer.

17 (6) "Controlling person" means a person, firm,
18 association, or corporation that has the power to direct or
19 cause to be directed the management, control, or activities
20 of a reinsurance intermediary.

21 (7) "Controlling producer" means a producer who,
22 directly or indirectly, controls an insurer.

23 (8) (a) "Insurer" means any person, firm, association,
24 or corporation authorized, under Title 33, chapter 2, part
25 1, to transact insurance business in this state.

1 (b) The following are not insurers:

2 (i) risk retention groups as defined in:

3 (A) the Superfund Amendments and Reauthorization Act of
4 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986);

5 (B) the Liability Risk Retention Act of 1986, 15 U.S.C.
6 3901, et seq.; or

7 (C) Title 33, chapter 11, part 1;

8 (ii) residual market pools and joint underwriting
9 authorities or associations; or

10 (iii) captive insurers.

11 (9) "Licensed producer" means a producer or reinsurance
12 intermediary licensed pursuant to this title.

13 (10) (a) "Managing general agent" means a person who:

14 (i) manages all or part of the insurance business of an
15 insurer and acts as an agent for the insurer;

16 (ii) either separately or together with affiliates,
17 produces, directly or indirectly, and underwrites an amount
18 of gross written premiums equal to or more than 5% of the
19 policyholder surplus in any quarter or year; and

20 (iii) engages in one or more of the following activities
21 on the business produced:

22 (A) adjustment or payment of claims in excess of an
23 amount determined by the commissioner; or

24 (B) negotiation of reinsurance on behalf of the
25 insurer.

1 (b) Notwithstanding the provisions of subsection
2 (10)(a), the following persons are not considered managing
3 general agents:

- 4 (i) an employee of the insurer;
- 5 (ii) a manager of the United States branch of an alien
6 insurer;
- 7 (iii) an underwriting manager who, pursuant to contract,
8 manages all the insurance operations of the insurer, is
9 under common control with the insurer, is subject to Title
10 33, chapter 2, part 11, and whose compensation is not based
11 on the value of premiums written; or
- 12 (iv) the attorney-in-fact authorized by and acting for
13 the subscribers of a reciprocal insurer or an interinsurance
14 exchange under powers of attorney.
- 15 (11) "NAIC" means the national association of insurance
16 commissioners.
- 17 (12) "Producer" means an insurance producer or
18 reinsurance intermediary authorized or licensed pursuant to
19 this title.
- 20 (13) (a) "Qualified United States financial institution"
21 means a financial institution that:
- 22 (i) is organized or licensed under the laws of the
23 United States or any state;
- 24 (ii) is regulated, supervised, and examined by federal
25 or state authorities having regulatory authority over banks

1 and trust companies and that either:

- 2 (A) is determined by the commissioner to meet the
3 standards of financial condition and standing considered
4 necessary and appropriate to regulate the quality of
5 financial institutions whose letters of credit are
6 acceptable to the commissioner; or
- 7 (B) is eligible to act as a fiduciary of a trust or has
8 been granted authority to operate with fiduciary powers.
- 9 (b) For purposes of this definition, the commissioner
10 may by rule adopt standards of financial condition and
11 standing that may be developed from time to time by the
12 securities valuation office of the NAIC.
- 13 (14) "Reinsurance intermediary" means a reinsurance
14 intermediary-broker or a reinsurance intermediary-manager.
- 15 (15) "Reinsurance intermediary-broker" means a person,
16 other than an officer or employee of the ceding insurer, who
17 solicits, negotiates, or places reinsurance cessions or
18 retrocessions on behalf of a ceding insurer without the
19 authority or power to bind reinsurance on behalf of the
20 insurer.
- 21 (16) (a) "Reinsurance intermediary-manager" means a
22 person who:
- 23 (i) has authority to bind or who manages all or part of
24 the assumed reinsurance business of a reinsurer, including
25 the management of a separate division, department, or

underwriting office; and

(ii) acts as an agent for the reinsurer, whether known as a reinsurance intermediary-manager, manager, or other similar term.

(b) The following persons are not considered reinsurance intermediary-managers with respect to the reinsurer:

(i) an employee of the reinsurer;

(ii) a manager of the United States branch of an alien reinsurer;

(iii) an underwriting manager who, pursuant to contract, manages all of the reinsurance operations of the reinsurer, is under common control with the reinsurer, is subject to Title 33, chapter 2, part 11, and whose compensation is not based on the volume of premiums written; or

(iv) a person who manages groups, associations, pools, or organizations of insurers that engage in joint underwriting or joint reinsurance and that are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

(17) "Reinsurer" means a person, firm, association, or corporation licensed in this state under this title as an insurer with authority to assume reinsurance.

(18) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

NEW SECTION. Section 2. Filing requirements. (1) Each

domestic, foreign, and alien insurer authorized to transact insurance in this state shall, on or before March 1 of each year, file with the NAIC a copy of its annual statement convention form, along with any additional filings for the preceding year as prescribed by the commissioner. The information filed with the NAIC must be in the same format and scope as that required by the commissioner and must include the signed jurat page and the actuarial certification. Amendments to the annual statement filing that are subsequently filed with the commissioner must also be filed with the NAIC.

(2) Foreign insurers domiciled in a state that has a law substantially similar to this section are considered to be in compliance with this section.

NEW SECTION. Section 3. Immunity of NAIC. In the

absence of actual malice, members of the NAIC; their authorized committees, subcommittees, task forces, delegates, and employees; and all others charged with the responsibility of collecting and processing the information developed from the filing of the annual statement convention forms are considered to act under the authority of [sections 2 through 4]. They are not subject to civil liability for libel, slander, or any other cause of action arising from their collection, review, analysis, or dissemination of

1 information collected from the filings required by [sections
2 1 through 38].

3 NEW SECTION. Section 4. Confidentiality. All financial
4 analysis ratios and examination synopses concerning
5 insurance companies that are submitted to the department by
6 the NAIC insurance regulatory information systems are
7 confidential and may not be disclosed by the department.

8 NEW SECTION. Section 5. Applicability of minimum
9 standards. (1) The provisions of [section 6] apply if, in
10 any calendar year, the aggregate amount of gross written
11 premiums on business placed with a controlled insurer by a
12 controlling producer is equal to or greater than 5% of the
13 admitted assets of the controlled insurer, as reported in
14 the controlled insurer's quarterly statement filed as of
15 September 30 of the prior year.

16 (2) Notwithstanding the provisions of subsection (1),
17 the provisions of [section 6] do not apply if:

18 (a) the controlling producer:

19 (i) does not receive compensation based upon the amount
20 of premiums written in connection with the insurance and
21 places insurance only with:

22 (A) the controlled insurer; or

23 (B) the controlled insurer and a member or members of
24 the controlled insurer's holding company system or the
25 controlled insurer's parent, affiliate, or subsidiary; and

1 (ii) accepts insurance placements only from
2 nonaffiliated subproducers and not directly from insureds;
3 and

4 (b) except for insurance business written through a
5 residual market facility, the controlled insurer accepts
6 insurance business only from a controlling producer, a
7 producer controlled by the controlled insurer, or a producer
8 that is a subsidiary of the controlled insurer.

9 NEW SECTION. Section 6. Minimum standards. Unless
10 there is a written contract between a controlling producer
11 and a controlled insurer specifying the responsibilities of
12 each party, the controlled insurer may not accept business
13 from the controlling producer and the controlling producer
14 may not place business with the controlled insurer. The
15 contract must be approved by the board of directors of the
16 controlled insurer and must contain the following minimum
17 provisions:

18 (1) The controlled insurer may terminate the contract
19 for cause, upon written notice to the controlling producer.
20 The controlled insurer shall suspend the authority of the
21 controlling producer to write business during the pendency
22 of any dispute regarding the cause for the termination.

23 (2) The controlling producer shall render to the
24 controlled insurer accounts detailing all material
25 transactions, including information necessary to support all

1 commissions, charges, and other fees received by or owing to
2 the controlling producer.

3 (3) On at least a monthly basis, the controlling
4 producer shall remit to the controlled insurer all funds due
5 under the terms of the contract. The due date must be fixed
6 so that premiums or installments of premiums collected must
7 be remitted no later than 90 days after the effective date
8 of any policy placed with the controlled insurer under the
9 contract.

10 (4) In accordance with the provisions of this title,
11 all funds collected for the controlled insurer's account
12 must be held by the controlling producer in a fiduciary
13 capacity, in one or more appropriately identified bank
14 accounts in banks that are members of the federal reserve
15 system. However, funds of a controlling producer not
16 required to be licensed in this state must be maintained in
17 compliance with the requirements of the controlling
18 producer's domiciliary jurisdiction.

19 (5) The controlling producer shall maintain separately
20 identifiable records of business written for the controlled
21 insurer.

22 (6) The contract may not be assigned in whole or in
23 part by the controlling producer.

24 (7) The controlled insurer shall provide the
25 controlling producer with its underwriting standards, rules,

1 procedures, manuals setting forth the rates to be charged,
2 and the conditions for the acceptance or rejection of risks.
3 The controlling producer shall adhere to the standards,
4 rules, procedures, rates, and conditions. The standards,
5 rules, procedures, rates, and conditions must be the same as
6 those applicable to comparable business placed with the
7 controlled insurer by a producer other than the controlling
8 producer.

9 (8) The rates of the commissions, charges, and other
10 fees may not be greater than those applicable to comparable
11 business placed with the controlled insurer by producers
12 other than controlling producers. For purposes of subsection
13 (7) and this subsection, examples of "comparable business"
14 include the same lines of insurance, same kinds of
15 insurance, same kinds of risks, similar policy limits, and
16 similar quality of business.

17 (9) If the contract provides that on insurance business
18 placed with the controlled insurer, the controlling producer
19 is to be compensated contingent upon the controlled
20 insurer's profits on that business, then the compensation
21 may not be determined and paid until at least 5 years after
22 the premiums on liability insurance are earned and at least
23 1 year after the premiums are earned on any other insurance.
24 The commissions may not be paid until the adequacy of the
25 controlled insurer's reserves on remaining claims has been

1 independently verified pursuant to [section 8].

2 (10) The controlled insurer may establish a different
3 limit for each line or subline of business. The controlled
4 insurer shall notify the controlling producer when the
5 applicable limit is approached and may not accept business
6 from the controlling producer if the limit is reached. The
7 controlling producer may not place business with the
8 controlled insurer if it has been notified by the controlled
9 insurer that the limit has been reached.

10 (11) The controlling producer may negotiate but may not
11 bind reinsurance on behalf of the controlled insurer on
12 business that the controlling producer places with the
13 controlled insurer, except that the controlling producer may
14 bind facultative reinsurance contracts pursuant to
15 obligatory facultative agreements if the contract with the
16 controlled insurer contains underwriting guidelines. For
17 reinsurance assumed and ceded, the guidelines must include a
18 list of reinsurers with which the automatic agreements are
19 in effect, the coverages and amounts or percentages that may
20 be reinsured, and commission schedules.

21 NEW SECTION. Section 7. Audit committee. Each
22 controlled insurer shall have an audit committee of the
23 board of directors composed of independent directors. The
24 audit committee shall annually review the adequacy of the
25 controlled insurer's loss reserves and meet with management,

1 the controlled insurer's independent certified public
2 accountants, and an independent casualty actuary or other
3 independent loss reserve specialist acceptable to the
4 commissioner.

5 NEW SECTION. Section 8. Annual report by independent
6 actuary. In addition to any other required loss reserve
7 certification, the controlled insurer shall, on April 1 of
8 each year, file with the commissioner an opinion of an
9 independent casualty actuary or other independent loss
10 reserve specialist acceptable to the commissioner. The
11 opinion must report the loss ratios for each line of
12 business written and must attest to the adequacy of loss
13 reserves established for losses incurred and outstanding as
14 of the yearend, including losses incurred but not reported,
15 on business placed by the producer.

16 NEW SECTION. Section 9. Annual report to commissioner.
17 The controlled insurer shall annually report to the
18 commissioner:

- 19 (1) the amount of commissions paid to the producer;
20 (2) the percentage the amount represents of the net
21 premiums written; and
22 (3) comparable amounts and the percentage paid to
23 noncontrolling producers for placements of the same kinds of
24 insurance.

25 NEW SECTION. Section 10. Disclosure. (1) Except as

1 provided in subsection (2), the producer, prior to the
2 effective date of the policy, shall deliver written notice
3 to the prospective insured, disclosing the relationship
4 between the producer and the controlled insurer.

5 (2) If the business is placed through a subproducer who
6 is not a controlling producer, the controlling producer
7 shall retain in the controlling producer's records a signed
8 commitment from the subproducer that the subproducer is
9 aware of the relationship between the controlled insurer and
10 the producer and that the subproducer has notified or will
11 notify the insured.

12 **NEW SECTION. Section 11. Penalties.** (1) (a) If the
13 commissioner believes that a controlling producer or any
14 other person has not materially complied with [sections 5
15 through 10] or any regulation or order promulgated under
16 [sections 5 through 10], the commissioner, after notice and
17 opportunity to be heard, may order the controlling producer
18 to cease placing business with the controlled insurer.

19 (b) If it is found that because of the material
20 noncompliance with [sections 5 through 10], the controlled
21 insurer or any policyholder of the controlled insurer has
22 suffered any loss or damage, the commissioner may maintain a
23 civil action or intervene in an action brought by or on
24 behalf of the controlled insurer or policyholder for
25 recovery of compensatory damages for the benefit of the

1 controlled insurer or policyholder or other appropriate
2 relief.

3 (2) The receiver may maintain a civil action for
4 recovery of damages or other appropriate sanctions for the
5 benefit of the insurer if:

6 (a) an order for liquidation or rehabilitation of the
7 controlled insurer has been entered pursuant to Title 33,
8 chapter 2, part 13;

9 (b) the receiver appointed under that order believes
10 that the controlling producer or any other person has not
11 materially complied with [sections 5 through 10] or any
12 regulation or order promulgated under [sections 5 through
13 10]; and

14 (c) the controlled insurer suffered any loss or damage
15 from the noncompliance.

16 (3) This section does not affect the right of the
17 commissioner to impose any other penalties provided for in
18 this title.

19 (4) This section may not be construed to alter or
20 affect the rights of policyholders, claimants, creditors, or
21 other third parties.

22 **NEW SECTION. Section 12. Compliance -- applicability.**

23 (1) Controlled insurers and controlling producers who are
24 not in compliance with [section 6] on October 1, 1993, have
25 60 days to come into compliance and shall comply with

[section 10] in all policies written or renewed on or after December 1, 1993.

(2) [Sections 5 through 10] apply to insurers that are domiciled in this state or domiciled in a state that is not an accredited state that has in effect a substantially similar law.

(3) The provisions of Title 33, chapter 2, part 11, to the extent they are not superseded by [sections 5 through 10], continue to apply to all entities within holding company systems subject to [sections 5 through 10].

(4) An insurer may not continue to use the services of a managing general agent after December 1, 1993, unless the use complies with [sections 14 through 18].

(5) An insurer or reinsurer may not continue to use the services of a reinsurance intermediary after December 1, 1993, unless the use complies with [sections 19 through 27].

NEW SECTION. Section 13. Rulemaking authority. (1) The commissioner may adopt rules implementing the provisions of [sections 1 through 38].

(2) The authority of the commissioner to adopt rules is specifically extended, without limitation, to establish standards for companies considered to be in hazardous financial condition, to require annual audited financial reports, to regulate life and health reinsurance agreements, to provide for reports to the commissioner by holding

company systems, and to establish accounting practices and procedures to be used by insurers in their annual statements.

NEW SECTION. Section 14. Licensure of managing general agent. (1) A person, firm, association, or corporation may not act in the capacity of a managing general agent with respect to risks located in this state for an insurer licensed in this state unless the person is a licensed producer in this state.

(2) A person, firm, association, or corporation may not act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless the person is licensed as a resident or nonresident producer in this state pursuant to the provisions of [sections 14 through 18].

(3) The commissioner may require a bond in an amount acceptable to the commissioner for the protection of the insurer.

(4) The commissioner may require the managing general agent to maintain a policy on errors and omissions.

NEW SECTION. Section 15. Managing general agent -- required contract provisions. A person acting in the capacity of a managing general agent may not place business with an insurer unless there is in force a written contract between the parties that sets forth the responsibilities of

each party. Whenever both parties share responsibility for a particular function, the written contract must specify the division of responsibilities. The contract must provide at least the following:

(1) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination.

(2) The managing general agent shall render accounts to the insurer, detailing all transactions, and shall remit all funds due under the contract to the insurer on not less than a monthly basis.

(3) All funds collected for the account of an insurer must be held by the managing general agent in a fiduciary capacity in a bank that is a member of the federal reserve system. This account must be used for all payments on behalf of the insurer. The managing general agent may not retain more than 3 months' estimated claims payments and allocated loss adjustment expenses.

(4) Separate records of business written by the managing general agent must be maintained. The insurer has access to and may copy all accounts and records that are related to its business, in a form usable by the insurer. The commissioner has access to all books, bank accounts, and

records of the managing general agent in a form usable to the commissioner. The records must be retained pursuant to 33-3-401.

(5) The contract may not be assigned in whole or in part by the managing general agent.

(6) The contract must contain appropriate underwriting guidelines, including:

(a) the maximum annual premium volume;

(b) the basis of the rates to be charged;

(c) the types of risks that may be written;

(d) maximum limits of liability;

(e) any applicable exclusions;

(f) the territorial limitations;

(g) policy cancellation provisions; and

(h) the maximum policy period.

(7) The insurer may cancel or decline to renew any policy of insurance, as provided by law.

(8) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(a) all claims must be reported to the company in a timely manner;

(b) a copy of the claims file must be sent to the insurer at its request or as soon as it becomes known that the claim:

(i) has the potential to exceed an amount determined by

1 the commissioner or actually exceeds the limit set by the
2 company, whichever is less;

3 (ii) involves a coverage dispute;

4 (iii) may exceed the managing general agent's claims
5 settlement authority;

6 (iv) is open for more than 6 months; or

7 (v) is closed by payment of an amount set by the
8 commissioner or an amount set by the company, whichever is
9 less;

10 (c) all claims files are the joint property of the
11 insurer and managing general agent. However, upon an order
12 of liquidation of the insurer, the files become the sole
13 property of the insurer or its estate. The managing general
14 agent has reasonable access to and may copy the files on a
15 timely basis.

16 (d) any settlement authority granted to the managing
17 general agent may be terminated for cause upon the insurer's
18 written notice to the managing general agent or upon the
19 termination of the contract. The insurer may suspend the
20 settlement authority during the pendency of any dispute
21 regarding the cause for termination.

22 (9) When electronic claims files are in existence, the
23 contract must address the timely transmission of the data.

24 (10) If the contract provides for a sharing of interim
25 profits by the managing general agent and the managing

1 general agent has the authority to determine the amount of
2 the interim profits, whether by establishing loss reserves
3 or controlling claim payments or in any other manner,
4 interim profits may not be paid to the managing general
5 agent until:

6 (a) 1 year after they are earned for property insurance
7 business;

8 (b) 5 years after they are earned on casualty business;
9 and

10 (c) the profits have been verified.

11 (11) The managing general agent may not:

12 (a) bind reinsurance or retrocessions on behalf of the
13 insurer, except that the managing general agent may bind
14 facultative reinsurance contracts pursuant to obligatory
15 facultative agreements if the contract with the insurer
16 contains reinsurance underwriting guidelines, including for
17 reinsurance assumed and ceded:

18 (i) a list of reinsurers with which automatic
19 agreements are in effect;

20 (ii) the coverages and amounts or percentages that may
21 be reinsured; and

22 (iii) commission schedules;

23 (b) commit the insurer to participate in insurance or
24 reinsurance syndicates;

25 (c) appoint any producer without ensuring that the

1 producer is lawfully licensed to transact the type of
2 insurance for which the producer is appointed;

3 (d) without prior approval of the insurer, pay or
4 commit the insurer to pay a claim over a specified amount,
5 net of reinsurance, which may not exceed 1% of the insurer's
6 policyholder's surplus as of December 31 of the last
7 completed calendar year;

8 (e) collect any payment from a reinsurer or commit the
9 insurer to any claim settlement with a reinsurer without the
10 prior approval of the insurer. If prior approval is given, a
11 report must be promptly forwarded to the insurer.

12 (f) permit its subproducer to serve on the insurer's
13 board of directors;

14 (g) jointly employ an individual who is employed with
15 the insurer; or

16 (h) appoint a submanaging general agent.

17 **NEW SECTION. Section 16. Duties of insurers.** (1) The
18 insurer must have on file an independent financial
19 examination, in a form acceptable to the commissioner, of
20 each managing general agent with which it has done business.

21 (2) If a managing general agent establishes loss
22 reserves, the insurer shall annually obtain the opinion of
23 an actuary attesting to the adequacy of loss reserves
24 established for losses incurred and outstanding on business
25 produced by the managing general agent. This is in addition

1 to any other required loss reserve certification.

2 (3) At least semiannually, the insurer shall conduct an
3 onsite review of the underwriting and claims processing
4 operations of the managing general agent.

5 (4) Binding authority for all reinsurance contracts or
6 participation in insurance or reinsurance syndicates rests
7 with an officer of the insurer who is not affiliated with
8 the managing general agent.

9 (5) Within 30 days of entering into or termination of a
10 contract with a managing general agent, the insurer shall
11 provide the commissioner with written notification of the
12 appointment or termination. Notices of appointment of a
13 managing general agent must include a statement of duties
14 that the applicant is expected to perform on behalf of the
15 insurer, the lines of insurance for which the applicant is
16 to be authorized to act, and any other information the
17 commissioner may request.

18 (6) An insurer shall review its books and records each
19 quarter to determine if any producer has become a managing
20 general agent. If the insurer determines that a producer has
21 become a managing general agent, the insurer shall promptly
22 notify the producer and the commissioner of the
23 determination and the insurer and the producer shall comply
24 with [sections 14 through 18] within 30 days.

25 (7) An insurer may not appoint to its board of

1 directors an officer, director, employee, subproducer, or
2 controlling shareholder of its managing general agent. This
3 subsection does not apply to relationships governed by Title
4 33, chapter 2, part 11, or [sections 5 through 10].

5 NEW SECTION. Section 17. Examination authority. The
6 acts of the managing general agent are considered to be the
7 acts of the insurer on whose behalf it is acting. A managing
8 general agent may be examined as if it were the insurer.

9 NEW SECTION. Section 18. Penalties and liabilities.
10 (1) If, after a hearing conducted in accordance with Title
11 33, chapter 1, part 7, the commissioner finds that a person
12 has violated any provision of [sections 14 through 18], the
13 commissioner may order:

14 (a) a penalty in an amount of \$5,000 for each separate
15 violation;

16 (b) revocation or suspension of the producer's license;
17 and

18 (c) the managing general agent to reimburse the
19 insurer, the rehabilitator, or a liquidator of the insurer
20 for any losses incurred by the insurer caused by a violation
21 of [sections 14 through 18] committed by the managing
22 general agent.

23 (2) An order of the commissioner pursuant to subsection
24 (1) is subject to judicial review pursuant to 33-1-711.

25 (3) This section does not limit the power of the

1 commissioner to impose any other penalty provided in this
2 title.

3 (4) [Sections 14 through 18] do not limit the rights of
4 policyholders, claimants, or auditors.

5 NEW SECTION. Section 19. Licensure of reinsurance
6 intermediaries. (1) A person, firm, association, or
7 corporation may not act as a reinsurance intermediary-broker
8 in this state if the reinsurance intermediary-broker
9 maintains an office directly, as a member or employee of a
10 firm or association, or as an officer, director, or employee
11 of a corporation:

12 (a) in this state, unless the reinsurance
13 intermediary-broker is a licensed producer in this state; or

14 (b) in another state, unless the reinsurance
15 intermediary-broker is a licensed producer in this state or
16 another state that has a law substantially similar to this
17 law or unless the reinsurance intermediary-broker is
18 licensed in this state as a nonresident reinsurance
19 intermediary.

20 (2) A person, firm, association, or corporation may not
21 act as a reinsurance intermediary-manager:

22 (a) for a reinsurer domiciled in this state, unless the
23 reinsurance intermediary-manager is a licensed producer in
24 this state;

25 (b) in this state, if the reinsurance

intermediary-manager maintains an office either directly or as a member or employee of a firm or association or as an officer, director, or employee of a corporation in this state, unless the reinsurance intermediary-manager is a licensed producer in this state; or

(c) in another state for a nondomestic insurer, unless the reinsurance intermediary-manager is a licensed producer in this state or another state that has a law substantially similar to this law or unless the person is licensed in this state as a nonresident insurance intermediary.

(3) Subject to subsection (2), the commissioner may require a reinsurance intermediary-manager to:

(a) file a bond in an amount from an insurer acceptable to the commissioner for the protection of the reinsurer; and

(b) maintain a policy on errors and omissions in an amount acceptable to the commissioner.

(4) (a) The commissioner may issue a reinsurance intermediary license to any person, firm, association, or corporation that has complied with the requirements of [sections 19 through 27]. A license issued to a firm or association authorizes all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license. All authorized persons must be named in the application and in any supplements to the application. A license issued to a

corporation must authorize all of the officers and any designated employees and directors to act as reinsurance intermediaries on behalf of the corporation. All authorized persons must be named in the application and in any supplements to the application.

(b) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as the agent for service of process in the manner provided for by this title for designation of service of process upon unauthorized insurers. The applicant shall also furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of each change in its designated agent for service of process, and the change may not become effective until acknowledged by the commissioner.

(5) (a) The commissioner may refuse to issue a reinsurance intermediary license if, in the commissioner's judgment:

(i) the applicant, a person named on the application, or a member, principal, officer, or director of the applicant is not trustworthy;

(ii) a controlling person of the applicant is not trustworthy to act as a reinsurance intermediary; or

(iii) any of the persons listed in subsection (5)(a)(i) or (5)(a)(ii) has given cause for revocation or suspension of the license or has failed to comply with any prerequisite for the issuance of the license.

(b) Upon written request, the commissioner shall furnish a summary of the basis for refusal to issue a license. The document is privileged and is not subject to public disclosure under Title 2, chapter 6, part 1.

(6) Licensed attorneys of this state, when acting in their professional capacity, are exempt from this section.

NEW SECTION. Section 20. Required contract provisions
 -- reinsurance intermediary-brokers. Transactions between a reinsurance intermediary-broker and the insurer it represents must be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization must, at a minimum, contain the following provisions:

(1) The insurer may terminate the reinsurance intermediary-broker's authority at any time.

(2) The reinsurance intermediary-broker shall render to the insurer accounts accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to

the reinsurance intermediary-broker. The reinsurance intermediary-broker shall remit all funds due to the insurer within 30 days of receipt.

(3) All funds collected for the insurer's account must be held by the reinsurance intermediary-broker in a fiduciary capacity in a bank that is a qualified United States financial institution.

(4) The reinsurance intermediary-broker shall comply with the requirements of [section 21].

(5) The reinsurance intermediary-broker shall comply with the written standards established by the insurer for the cession or retrocession of all risks.

(6) The reinsurance intermediary-broker shall disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

NEW SECTION. Section 21. Books and records -- reinsurance intermediary-brokers. (1) For at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-broker, the reinsurance intermediary-broker shall keep a complete record for each transaction, showing:

(a) the type of contract, limits, underwriting restrictions, classes or risks, and territory;

(b) the period of coverage, including the effective and expiration dates, cancellation provisions, and notice

1 required for cancellation;
 2 (c) the reporting and settlement requirements of
 3 balances;
 4 (d) the rate used to compute the reinsurance premium;
 5 (e) the names and addresses of assuming reinsurers;
 6 (f) the rates of all reinsurance commissions, including
 7 the commissions on any retrocessions handled by the
 8 reinsurance intermediary-broker;
 9 (g) any related correspondence and memorandums;
 10 (h) the proof of placement;
 11 (i) the details regarding retrocessions handled by the
 12 reinsurance intermediary-broker, including the identity of
 13 the party making the retrocession and the percentage of each
 14 contract assumed or ceded;
 15 (j) the financial records, including but not limited to
 16 premium and loss accounts; and
 17 (k) when the reinsurance intermediary-broker procures a
 18 reinsurance contract on behalf of a licensed ceding insurer:
 19 (i) directly from any assuming reinsurer, written
 20 evidence that the assuming reinsurer has agreed to assume
 21 the risk; or
 22 (ii) if placed through a representative of the assuming
 23 reinsurer, other than an employee, written evidence that the
 24 reinsurer has delegated binding authority to the
 25 representative.

1 (2) The insurer has access to and may copy and audit
 2 all accounts and records maintained by the reinsurance
 3 intermediary-broker that are related to the insurer's
 4 business, in a form usable by the insurer.

5 NEW SECTION. Section 22. Duties of insurers utilizing
 6 the services of a reinsurance intermediary-broker. (1) An
 7 insurer may not engage the services of any person, firm,
 8 association, or corporation to act as a reinsurance
 9 intermediary-broker on its behalf unless the person is
 10 licensed as required by [section 19].

11 (2) An insurer may not employ an individual who is
 12 employed by a reinsurance intermediary-broker with which it
 13 transacts business unless the reinsurance
 14 intermediary-broker is under common control with the insurer
 15 and is subject to the provisions of Title 33, chapter 2,
 16 part 11.

17 (3) The insurer shall annually obtain a copy of
 18 statements of the financial condition of each reinsurance
 19 intermediary-broker with which it transacts business.

20 NEW SECTION. Section 23. Required contract provisions
 21 -- reinsurance intermediary-managers. Transactions between a
 22 reinsurance intermediary-manager and the reinsurer it
 23 represents in that capacity may only be entered into
 24 pursuant to a written contract specifying the
 25 responsibilities of each party. The contract must be

1 approved by the reinsurer's board of directors. At least 30
2 days before the reinsurer assumes or cedes business through
3 a producer, a true copy of the approved contract must be
4 filed with the commissioner for approval. The contract must,
5 at a minimum, include the following provisions:

6 (1) The reinsurer may terminate the contract for cause
7 upon written notice to the reinsurance intermediary-manager.
8 The reinsurer may immediately suspend the authority of the
9 reinsurance intermediary-manager to assume or cede business
10 during the pendency of any dispute regarding the cause for
11 termination.

12 (2) The reinsurance intermediary-manager shall render
13 accounts to the reinsurer accurately detailing all material
14 transactions, including information necessary to support all
15 commissions, charges, and other fees received by or owed to
16 the reinsurance intermediary-manager, and shall remit all
17 funds due under the contract to the reinsurer on not less
18 than a monthly basis.

19 (3) All funds collected for the reinsurer's account
20 will be held by the reinsurance intermediary-manager in a
21 fiduciary capacity in a bank that is a qualified United
22 States financial institution. The reinsurance
23 intermediary-manager may not retain more than 3 months'
24 estimated claims payments and allocated loss adjustment
25 expenses. The reinsurance intermediary-manager shall

1 maintain a separate bank account for each reinsurer that it
2 represents.

3 (4) For at least 10 years after expiration of each
4 contract of reinsurance transacted by the reinsurance
5 intermediary-manager, the reinsurance intermediary-manager
6 shall keep a complete record for each transaction showing:

7 (a) the type of contract, limits, underwriting
8 restrictions, classes or risks, and territory;

9 (b) the period of coverage, including effective and
10 expiration dates, cancellation provisions, notice required
11 for cancellation, and disposition of outstanding reserves on
12 covered risks;

13 (c) the reporting and settlement requirements of
14 balances;

15 (d) the rate used to compute the reinsurance premium;

16 (e) the names and addresses of reinsurers;

17 (f) the rates of all reinsurance commissions, including
18 the commissions on any retrocessions handled by the
19 reinsurance intermediary-manager;

20 (g) related correspondence and memorandums;

21 (h) proof of placement;

22 (i) details regarding retrocessions handled by the
23 reinsurance intermediary-manager, as permitted by [section
24 25], including the identity of persons making the
25 retrocessions and the percentage of each contract assumed or

1 ceded;

2 (j) financial records, including but not limited to
3 premium and loss accounts; and

4 (k) when the reinsurance intermediary-manager places a
5 reinsurance contract on behalf of a ceding insurer:

6 (i) directly from any assuming reinsurer, written
7 evidence that the assuming reinsurer has agreed to assume
8 the risk; or

9 (ii) if placed through a representative of the assuming
10 reinsurer, other than an employee, written evidence that the
11 assuming reinsurer has delegated binding authority to the
12 representative.

13 (5) The reinsurer will have access to and the right to
14 copy all accounts and records maintained by the reinsurance
15 intermediary-manager related to its business in a form
16 usable by the reinsurer.

17 (6) The contract may not be assigned in whole or in
18 part by the reinsurance intermediary-manager.

19 (7) The reinsurance intermediary-manager shall comply
20 with the written underwriting and rating standards
21 established by the insurer for the acceptance, rejection, or
22 cession of all risks.

23 (8) The rates, terms, and purposes of commissions,
24 charges, and other fees that the reinsurance
25 intermediary-manager may levy against the reinsurer must be

1 set forth.

2 (9) If the contract permits the reinsurance
3 intermediary-manager to settle claims on behalf of the
4 reinsurer:

5 (a) all claims must be reported to the reinsurer in a
6 timely manner;

7 (b) a copy of the claim file must be sent to the
8 reinsurer at its request or as soon as it becomes known that
9 the claim:

10 (i) has the potential to exceed the lesser of an amount
11 determined by the commissioner or the limit set by the
12 reinsurer;

13 (ii) involves a coverage dispute;

14 (iii) may exceed the reinsurance intermediary-manager's
15 claims settlement authority;

16 (iv) is open for more than 6 months; or

17 (v) is closed by payment of the lesser of an amount set
18 by the commissioner or an amount set by the reinsurer;

19 (c) all claim files must be the joint property of the
20 reinsurer and the reinsurance intermediary-manager. However,
21 upon an order of liquidation of the reinsurer, the files
22 become the sole property of the reinsurer or its estate. The
23 reinsurance intermediary-manager must have reasonable access
24 to and the right to copy the files on a timely basis;

25 (d) any settlement authority granted to the reinsurance

intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

(10) If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, the interim profits may not be paid until:

(a) 1 year after the end of each underwriting period for property business;

(b) 5 years after the end of each underwriting period for casualty business;

(c) a later period set by the commissioner for specified lines of insurance; and

(d) the adequacy of reserves on remaining claims has been verified pursuant to [section 25].

(11) The reinsurance intermediary-manager shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant.

(12) The reinsurer shall, at least semiannually, conduct an onsite review of the underwriting and claims processing operations of the reinsurance intermediary-manager.

(13) The reinsurance intermediary-manager shall disclose to the reinsurer any relationship it has with any insurer

prior to ceding or assuming any business with the insurer pursuant to the contract.

(14) Within the scope of its actual or apparent authority, the acts of the reinsurance intermediary-manager are considered to be the acts of the reinsurer on whose behalf it is acting.

NEW SECTION. Section 24. Prohibited acts. A reinsurance intermediary-manager may not:

(1) bind retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may bind facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for retrocessions. The guidelines must include a list of reinsurers with which automatic agreements are in effect and, for each reinsurer, must include the coverages, amounts of percentages that may be reinsured, and commission schedules.

(2) commit the reinsurer to participate in reinsurance syndicates;

(3) appoint any producer without ensuring that the producer is licensed to transact the type of reinsurance for which the producer is appointed;

(4) without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the

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1 reinsurer or 1% of the reinsurer's policyholder's surplus as
2 of December 31 of the last complete calendar year;

3 (5) collect any payment from a party making a
4 retrocession, or commit the reinsurer to any claim
5 settlement with a party making a retrocession, without prior
6 approval of the reinsurer. If prior approval is given, a
7 report must be promptly forwarded to the reinsurer.

8 (6) jointly employ an individual who is employed by the
9 reinsurer unless the reinsurance intermediary-manager is
10 under common control with the reinsurer subject to Title 33,
11 chapter 2, part 11;

12 (7) appoint a subreinsurance intermediary-manager.

13 **NEW SECTION. Section 25. Duties of reinsurers using**
14 **services of reinsurance intermediary-manager.** (1) A
15 reinsurer may not engage the services of any person, firm,
16 association, or corporation as a reinsurance
17 intermediary-manager on its behalf unless the person is
18 licensed as required by [section 19].

19 (2) The reinsurer shall annually obtain a copy of
20 statements of the financial condition of each reinsurance
21 intermediary-manager that the reinsurer has engaged,
22 prepared by an independent certified accountant, in a form
23 acceptable to the commissioner.

24 (3) If a reinsurance intermediary-manager establishes
25 loss reserves, the reinsurer shall annually obtain the

1 opinion of an actuary attesting to the adequacy of loss
2 reserves established for losses incurred and outstanding on
3 business produced by the reinsurance intermediary-manager.
4 The opinion is in addition to any other required loss
5 reserve certification.

6 (4) Binding authority for all retrocessional contracts
7 or participation in reinsurance syndicates must rest with an
8 officer of the reinsurer who may not be affiliated with the
9 reinsurance intermediary-manager.

10 (5) Within 30 days of termination of a contract with a
11 reinsurance intermediary-manager, the reinsurer shall
12 provide written notification of the termination to the
13 commissioner.

14 (6) A reinsurer may not appoint to its board of
15 directors any officer, director, employee, controlling
16 shareholder, or subproducer of its reinsurance
17 intermediary-manager. This subsection does not apply to
18 relationships governed by Title 33, chapter 2, part 11, or,
19 if applicable, [sections 19 through 23].

20 **NEW SECTION. Section 26. Examination authority.** (1) A
21 reinsurance intermediary is subject to examination by the
22 commissioner. The commissioner must have access to all
23 books, bank accounts, and records of the reinsurance
24 intermediary in a form usable to the commissioner.

25 (2) A reinsurance intermediary-manager may be examined

1 as if it were the reinsurer.

2 **NEW SECTION. Section 27. Penalties and liabilities.**

3 (1) (a) A reinsurance intermediary, insurer, or reinsurer
4 found by the commissioner, after a hearing conducted in
5 accordance with Title 33, chapter 1, part 7, to be in
6 violation of any provision of [sections 19 through 26]:

7 (i) shall, for each separate violation, pay a penalty
8 in an amount not to exceed \$5,000; and

9 (ii) is subject to revocation or suspension of its
10 license.

11 (b) If a violation was committed by the reinsurance
12 intermediary, the reinsurance intermediary shall make
13 restitution to the insurer, reinsurer, rehabilitator, or
14 liquidator of the insurer or reinsurer for the net losses
15 incurred by the insurer or reinsurer attributable to the
16 violation.

17 (2) The order of the commissioner pursuant to
18 subsection (1) is subject to judicial review pursuant to
19 Title 33, chapter 1, part 7.

20 (3) This section does not limit the authority of the
21 commissioner to impose any other penalties provided in the
22 insurance law.

23 (4) [Sections 19 through 26] do not limit or restrict
24 the rights of policyholders, claimants, creditors, or other
25 third parties or confer any rights upon those persons.

1 **NEW SECTION. Section 28. Credit allowed domestic**
2 **ceding insurer.** (1) Credit for reinsurance is allowed to a
3 domestic ceding insurer as either an asset or a deduction
4 from liability on account of reinsurance ceded only when the
5 reinsurer meets the requirements of subsection (2), (3),
6 (4), (5), or (6). If the requirements of subsection (4) or
7 (5) are met, the requirements of subsection (7) must also be
8 met.

9 (2) Credit must be allowed when the reinsurance is
10 ceded to an assuming insurer that is licensed to transact
11 insurance or reinsurance in this state.

12 (3) Credit must be allowed when the reinsurance is
13 ceded to an assuming insurer that is accredited as a
14 reinsurer in this state. Credit may not be allowed a
15 domestic ceding insurer if the assuming insurer's
16 accreditation has been revoked by the commissioner after
17 notice and hearing. An accredited reinsurer is one that:

18 (a) files with the commissioner evidence of its
19 submission to this state's jurisdiction;

20 (b) submits to this state's authority to examine its
21 books and records;

22 (c) is licensed to transact insurance or reinsurance in
23 at least one state or, in the case of a United States branch
24 of an alien assuming insurer, is entered through and
25 licensed to transact insurance or reinsurance in at least

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1 one state;

2 (d) files annually with the commissioner a copy of its
3 annual statement filed with the insurance department of its
4 state of domicile and a copy of its most recent audited
5 financial statement and either:

6 (i) maintains a surplus with regard to policyholders in
7 an amount that is not less than \$20 million and whose
8 accreditation has not been denied by the commissioner within
9 90 days of its submission; or

10 (ii) maintains a surplus with regard to policyholders in
11 an amount less than \$20 million and whose accreditation has
12 been approved by the commissioner.

13 (4) (a) Subject to subsection (4)(b), credit must be
14 allowed when:

15 (i) the reinsurance is ceded to an assuming insurer
16 that is domiciled and licensed in or, in the case of a
17 United States branch of an alien assuming insurer, is
18 entered through a state that employs standards regarding
19 credit for reinsurance substantially similar to those
20 applicable under this statute; and

21 (ii) the assuming insurer or the United States branch of
22 an alien assuming insurer:

23 (A) maintains a surplus with regard to policyholders in
24 an amount not less than \$20 million; and

25 (B) submits to the authority of this state to examine

1 its books and records.

2 (b) The requirement of subsection (4)(a)(i) does not
3 apply to reinsurance ceded and assumed pursuant to pooling
4 arrangements among insurers in the same holding company
5 system.

6 (5) (a) Credit must be allowed when the reinsurance is
7 ceded to an assuming insurer that maintains a trust fund in
8 a qualified United States financial institution for the
9 payment of the valid claims of its United States
10 policyholders and ceding insurers and their assigns and
11 successors in interest. The assuming insurer shall report
12 annually to the commissioner information substantially the
13 same as that required to be reported on the NAIC annual
14 statement form by licensed insurers to enable the
15 commissioner to determine the sufficiency of the trust fund.

16 (b) (i) In the case of a single assuming insurer, the
17 trust must consist of a trust account representing the
18 assuming insurer's liabilities attributable to business
19 written in the United States, and in addition, the assuming
20 insurer shall maintain a surplus with the trustee of not
21 less than \$20 million.

22 (ii) In the case of a group of individual unincorporated
23 underwriters, the trust must consist of a trust account
24 representing the group's liabilities attributable to
25 business written in the United States, and in addition, the

group shall maintain a surplus with the trustee of which \$100 million must be held jointly for the benefit of United States ceding insurers of any member of the group. The group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.

(iii) In the case of a group of incorporated insurers under common administration:

(A) the provisions of subsection (5)(b)(iii)(B) apply, to the group that:

(I) complies with the reporting requirements contained in subsection (5)(a);

(II) has continuously transacted an insurance business outside the United States for at least 3 years immediately prior to making application for accreditation;

(III) submits to this state's authority to examine its books and records and bears the expense of the examination; and

(IV) has aggregate policyholders' surplus of \$10 billion;

(B) (I) the trust must be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the

group;

(II) the group shall maintain a joint surplus with a trustee of which \$100 million is held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any liabilities; and

(III) each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.

(c) The trust must be established in a form approved by the commissioner. The trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers and their assigns and successors in interest. The trust and the assuming insurer are subject to examination as determined by the commissioner. The trust described in this subsection (c) must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

(d) No later than February 28 of each year, the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the end of the preceding year.

The trustees shall certify the date of termination of the trust, if planned, or certify that the trust may not expire prior to the following December 31.

(6) Credit must be allowed when the reinsurance is ceded to an assuming insurer that does not meet the requirements of subsection (2), (3), (4), or (5) but only with respect to the insurance of risks located in a jurisdiction in which the reinsurance is required by applicable law or regulation of that jurisdiction.

(7) (a) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subsections (4) and (5) may not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(i) that in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, will:

(A) submit to the jurisdiction of any court of competent jurisdiction in any state of the United States;

(B) comply with all requirements necessary to give the court jurisdiction; and

(C) abide by the final decision of the court or of any appellate court in the event of an appeal; and

(ii) to designate the commissioner or a designated

attorney as its attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

(b) Subsection (7)(a)(i) is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes if an obligation is created in the agreement.

NEW SECTION. Section 29. Reduction of liability for reinsurance ceded by domestic insurer to assuming insurer. A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of [section 28] must be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer:

(1) under a reinsurance contract with the assuming insurer as security for the payment of obligations under the contract if the security is held in the United States subject to withdrawal solely by and under the exclusive control of the ceding insurer; or

(2) in the case of a trust, in a qualified United States financial institution. This security may be in the form of:

(a) cash;

1 (b) securities listed by the securities valuation
2 office of the NAIC and qualifying as admitted assets;

3 (c) clean, irrevocable, unconditional letters of credit
4 that are issued or confirmed by a qualified United States
5 financial institution no later than December 31 of the year
6 for which filing is being made and that are in the
7 possession of the ceding company on or before the filing
8 date of its annual statement. Letters of credit meeting
9 applicable standards of issuer acceptability as of the dates
10 of their issuance or confirmation must, notwithstanding the
11 issuing or confirming institution's subsequent failure to
12 meet applicable standards of issuer acceptability, continue
13 to be acceptable as security until their expiration,
14 extension, renewal, modification, or amendment, whichever
15 occurs first.

16 (d) any other form of security acceptable to the
17 commissioner.

18 NEW SECTION. **Section 30.** Reinsurance agreements
19 affected. [Sections 28 and 29] apply to all cessions after
20 October 1, 1993, under reinsurance agreements that have had
21 an inception, anniversary, or renewal date on or before
22 April 1, 1993.

23 NEW SECTION. **Section 31.** Conduct of examinations --
24 records -- correction of accounts -- appraisals. (1) Upon
25 determining that an examination should be conducted, the

1 commissioner or the commissioner's designee shall issue an
2 examination warrant appointing one or more examiners to
3 perform the examination and instructing them as to the scope
4 of the examination. In conducting the examination, the
5 examiner shall observe the guidelines and procedures set
6 forth in the examiners' handbook adopted by the NAIC. The
7 commissioner may also employ other guidelines or procedures
8 as the commissioner considers appropriate.

9 (2) Every company or person from whom information is
10 sought and its officers, directors, employees, and agents
11 shall provide to the examiners appointed under subsection
12 (1) timely, convenient, and free access at all reasonable
13 hours at its offices to all books, records, accounts,
14 papers, documents, and any or all computer or other
15 recordings relating to the property, assets, business, and
16 affairs of the company being examined. The officers,
17 directors, employees, and agents of the company or person
18 shall facilitate the examination and aid in the examination
19 so far as it is in their power to do so. The refusal of any
20 company, by its officers, directors, employees, or agents,
21 to submit to examination or to comply with any reasonable
22 written request of the examiners is grounds for suspension,
23 refusal, or nonrenewal of any license or authority held by
24 the company to engage in an insurance or other business
25 subject to the commissioner's jurisdiction. A proceeding for

1 suspension, revocation, or refusal of any license or
2 authority must be conducted pursuant to 33-1-318.

3 (3) The commissioner or any examiner has the power to
4 issue subpoenas, administer oaths, and examine under oath
5 any person concerning any matter pertinent to the
6 examination. Upon the failure or refusal of a person to obey
7 a subpoena, the commissioner may petition a court of
8 competent jurisdiction and, upon proper showing, the court
9 may enter an order compelling the witness to appear and
10 testify or to produce documentary evidence. Failure to obey
11 the court order is punishable as contempt of court.

12 (4) When making an examination under this part, the
13 commissioner may retain attorneys, appraisers, independent
14 actuaries, independent certified public accountants, or
15 other professionals and specialists as examiners. The cost
16 of retaining the personnel must be borne by the company that
17 is the subject of the examination.

18 (5) This part may not be construed to limit the
19 commissioner's authority to terminate or suspend any
20 examination in order to pursue other legal or regulatory
21 action pursuant to this title. Findings of fact and
22 conclusions made pursuant to an examination are prima facie
23 evidence in any legal or regulatory action.

24 (6) This part may not be construed to limit the
25 commissioner's authority to use and, if appropriate, to make

1 public any final or preliminary examination report, any
2 examiner or company workpapers or other documents, or any
3 other information discovered or developed during the course
4 of any examination in the furtherance of any legal or
5 regulatory action that the commissioner may consider
6 appropriate.

7 NEW SECTION. Section 32. Examination reports --
8 hearings -- confidentiality -- publication. (1) All
9 examination reports must be composed only of facts appearing
10 upon the books, records, or other documents of the company,
11 its agents, or other persons examined or as ascertained from
12 the testimony of its officers or agents or other persons
13 examined concerning its affairs. The report must contain the
14 conclusions and recommendations that the examiners find
15 reasonably warranted from the facts.

16 (2) No later than 60 days following completion of the
17 examination, the examiner in charge shall file with the
18 department a verified written report of examination under
19 oath. Upon receipt of the verified report, the department
20 shall transmit the report to the company examined, together
21 with a notice that gives the company examined a reasonable
22 opportunity, but not more than 30 days, to make a written
23 submission or rebuttal with respect to any matters contained
24 in the examination report.

25 (3) Within 30 days of the end of the period allowed for

1 the receipt of written submissions or rebuttals, the
2 commissioner shall fully consider and review the report,
3 together with any written submissions or rebuttals and any
4 relevant portions of the examiner's workpapers and enter an
5 order:

6 (a) adopting the examination report as filed or with
7 modification or corrections. If the examination report
8 reveals that the company is operating in violation of any
9 law, regulation, or prior order of the commissioner, the
10 commissioner may order the company to take any action the
11 commissioner considers necessary and appropriate to cure the
12 violation.

13 (b) rejecting the examination report with directions to
14 the examiners to reopen the examination for purposes of
15 obtaining additional data, documentation, information, or
16 testimony and of refiling pursuant to subsection (2); or

17 (c) calling for an investigatory hearing with no less
18 than 20 days' notice to the company for purposes of
19 obtaining additional data, documentation, information, and
20 testimony.

21 (4) (a) All orders entered pursuant to subsection
22 (3)(a) must be accompanied by findings and conclusions
23 resulting from the commissioner's consideration and review
24 of the examination report, relevant examiner workpapers, and
25 any written submissions or rebuttals. An order must be

1 considered a final administrative decision and may be
2 appealed pursuant to Title 33, chapter 1, part 7, and must
3 be served upon the company by certified mail, together with
4 a copy of the adopted examination report. Within 30 days of
5 the issuance of the adopted report, the company shall file
6 affidavits executed by each of its directors stating under
7 oath that they have received a copy of the adopted report
8 and related orders.

9 (b) (i) A hearing conducted under subsection (3)(c) by
10 the commissioner or an authorized representative must be
11 conducted as a nonadversarial, confidential, investigatory
12 proceeding as necessary for the resolution of any
13 inconsistencies, discrepancies, or disputed issues apparent
14 upon the face of the filed examination report or raised by
15 or as a result of the commissioner's review of relevant
16 workpapers or by the written submission or rebuttal of the
17 company. Within 20 days of the conclusion of the hearing,
18 the commissioner shall enter an order pursuant to subsection
19 (3)(a).

20 (ii) The commissioner may not appoint an examiner as an
21 authorized representative to conduct the hearing. The
22 hearing must proceed expeditiously with discovery by the
23 company limited to the examiner's workpapers that tend to
24 substantiate any assertions set forth in any written
25 submission or rebuttal. The commissioner or the

1 commissioner's representative may issue subpoenas for the
 2 attendance of any witnesses or the production of any
 3 documents considered relevant to the investigation, whether
 4 under the control of the department, the company, or other
 5 persons. The documents produced must be included in the
 6 record, and testimony taken by the commissioner or the
 7 commissioner's representative must be under oath and
 8 preserved for the record. This section does not require the
 9 department to disclose any information or records that would
 10 indicate or show the existence or content of any
 11 investigation or activity of a criminal justice agency.

12 (iii) The hearing must proceed with the commissioner or
 13 the commissioner's representative posing questions to the
 14 persons subpoenaed. The company and the department may
 15 present testimony relevant to the investigation.
 16 Cross-examination must be conducted only by the commissioner
 17 or the commissioner's representative. The company and the
 18 department must be permitted to make closing statements and
 19 may be represented by counsel of their choice.

20 (5) (a) Upon the adoption of the examination report
 21 under subsection (3)(a), the commissioner shall continue to
 22 hold the content of the examination report as private and
 23 confidential information for a period of 30 days except to
 24 the extent provided in subsection (2). After 30 days, the
 25 commissioner may open the report for public inspection as

1 long as a court of competent jurisdiction has not stayed its
 2 publication.

3 (b) This title does not prevent and may not be
 4 construed as prohibiting the commissioner from disclosing
 5 the content of an examination report or preliminary
 6 examination report, the results of an examination, or any
 7 matter relating to a report or results to the insurance
 8 department of this state or of any other state or country,
 9 to law enforcement officials of this state or of any other
 10 state, or to an agency of the federal government at any time
 11 as long as the agency or office receiving the report or
 12 matters relating to the report agrees in writing to hold it
 13 confidential and in a manner consistent with this part.

14 (c) If the commissioner determines that regulatory
 15 action is appropriate as a result of any examination, the
 16 commissioner may initiate any proceedings or actions as
 17 provided by law.

18 (6) All working papers, recorded information,
 19 documents, and copies produced by, obtained by, or disclosed
 20 to the commissioner or any other person in the course of an
 21 examination made under this part must be given confidential
 22 treatment, are not subject to subpoena, and may not be made
 23 public by the commissioner or any other person, except to
 24 the extent provided in subsection (5). Access may also be
 25 granted to the NAIC. The persons given access shall agree in

writing, prior to receiving the information, to treat the information in the confidential manner required by this section unless the prior written consent of the company to which it pertains has been obtained.

NEW SECTION. Section 33. Conflict of interest. (1) An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest with, is affiliated with the management of, or owns a pecuniary interest in any person subject to examination under this part. This section may not be construed to automatically preclude an examiner from being:

(a) a policyholder or claimant under an insurance policy;

(b) a grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;

(c) an investment owner in shares of regulated diversified investment companies; or

(d) a settlor or beneficiary of a blind trust into which any otherwise impermissible holdings have been placed.

(2) Notwithstanding the requirements of this section, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other individuals who are independently practicing their professions, even though the persons may

from time to time be similarly employed or retained by persons subject to examination under this part.

NEW SECTION. Section 34. Taxation of purchasing group.

Premium taxes and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any members of the purchasing group must be:

(1) imposed at the same rate and subject to the same interest, fines, and penalties as those applicable to premium taxes and taxes on premiums paid to surplus lines insurers and authorized insurers, pursuant to 33-2-311 and 33-2-705, respectively; and

(2) paid by the authorized or surplus lines insurers and, if not paid by them, paid by the insurance producer for the purchasing group and, if not paid by the insurance producer, paid by the purchasing group and, if not paid by the purchasing group, paid by each of its members.

NEW SECTION. Section 35. Condition on release from delinquency proceedings. An insurer that is subject to any delinquency proceeding, whether formal, informal, administrative, or judicial, may not:

(1) be released from the proceeding, unless the proceeding is converted to a judicial rehabilitation or liquidation proceeding;

(2) be permitted to solicit or accept new business or request or accept the restoration of any suspended or

1 revoked license or certificate of authority;

2 (3) be returned to the control of its shareholders or
3 private management; or

4 (4) have any of its assets returned to the control of
5 its shareholders or private management until all payments of
6 or on account of the insurer's contractual obligations by
7 all guaranty associations, along with all expenses of the
8 guaranty associations and interest on all payments and
9 expenses, have been repaid to the guaranty associations or a
10 plan of repayment by the insurer has been approved by the
11 guaranty association.

12 NEW SECTION. Section 36. Indemnification of
13 rehabilitator, liquidator, and employees -- persons covered.

14 (1) The persons entitled to protection under [sections 37
15 and 38] are:

16 (a) all rehabilitators and liquidators responsible for
17 the conduct of a delinquency proceeding under Title 33,
18 chapter 2, including present and former rehabilitators and
19 liquidators; and

20 (b) the employees of the rehabilitators and
21 liquidators, including all present and former special
22 deputies and assistant special deputies appointed by the
23 commissioner, and all persons whom the commissioner, special
24 deputies, or assistant special deputies have employed to
25 assist in a delinquency proceeding under Title 33, chapter

1 2.

2 (2) Attorneys, accountants, auditors, and other
3 professional persons or firms, who are retained by the
4 rehabilitator or liquidator as independent contractors, and
5 their employees are not considered employees of the
6 rehabilitator or liquidator for purposes of any cause of
7 action initiated by the rehabilitator or liquidator against
8 the independent contractor in the name of the rehabilitation
9 or liquidation estate.

10 NEW SECTION. Section 37. Indemnification of
11 rehabilitator, liquidator, and employees. (1) If any legal
12 action is commenced against the rehabilitator or liquidator
13 or any employee of the rehabilitator or liquidator, whether
14 against the rehabilitator, liquidator, or employee
15 personally or in an official capacity, alleging property
16 damage, property loss, personal injury, or other civil
17 liability caused by or resulting from any alleged act,
18 error, or omission of the rehabilitator, liquidator, or
19 employee arising out of or by reason of duties or
20 employment, the rehabilitator, liquidator, or employee is
21 indemnified from the assets of the insurer for all expenses,
22 attorney fees, judgments, settlements, decrees, surety bond
23 premiums, or amounts due and owing or paid in satisfaction
24 of or incurred in the defense of the legal action unless it
25 is determined upon a final adjudication on the merits that

1 the alleged act, error, or omission of the rehabilitator,
2 liquidator, or employee that gave rise to the claim did not
3 arise out of or by reason of the rehabilitator's,
4 liquidator's, or employee's duties or employment or was
5 caused by intentional or willful and wanton misconduct.

6 (2) Attorney fees and related expenses incurred in
7 defending a legal action for which indemnity is available
8 under this section must be paid from the assets of the
9 insurer, as the expenses are incurred and in advance of the
10 final disposition of the action, upon receipt of an
11 undertaking by or on behalf of the rehabilitator,
12 liquidator, or employee to repay the attorney fees and
13 expenses. If, upon a final adjudication on the merits, it is
14 determined that the rehabilitator, liquidator, or employee
15 is not entitled to indemnity under this section, the payment
16 must be made from the undertaking.

17 (3) An indemnification for expenses, attorney fees,
18 judgments, settlements, decrees, surety bond premiums, or
19 other amounts paid or to be paid from the insurer's assets
20 pursuant to this section are an administrative expense of
21 the insurer.

22 (4) If actual or threatened litigation against a
23 rehabilitator, liquidator, or employee for which indemnity
24 may be available under this section occurs, a reasonable
25 amount of funds that in the judgment of the commissioner may

1 be needed to provide indemnity must be segregated and
2 reserved from the assets of the insurer as security for the
3 payment of indemnity until all applicable statutes of
4 limitation have run, all actual or threatened actions
5 against the rehabilitator, liquidator, or employee have been
6 completely and finally resolved, and all obligations of the
7 insurer and the commissioner under this section have been
8 satisfied.

9 (5) In lieu of segregation and reservation of funds,
10 the commissioner may obtain a surety bond or make other
11 arrangements that will enable the commissioner to fully
12 secure the payment of all obligations under this section.

13 NEW SECTION. Section 38. Settlement of actions against
14 rehabilitator, liquidator, and employees -- court approval
15 -- applicability. (1) If any legal action against an
16 employee for which indemnity may be available under this
17 section is settled prior to final adjudication on the
18 merits, the insurer shall pay the settlement amount on
19 behalf of the employee or indemnify the employee for the
20 settlement amount unless the commissioner determines:

21 (a) that the claim did not arise out of or by reason of
22 the employee's duties or employment; or

23 (b) that the claim was caused by the intentional or
24 willful and wanton misconduct of the employee.

25 (2) In a legal action in which the rehabilitator or

1 liquidator is a defendant, that portion of any settlement
2 relating to the alleged act, error, or omission of the
3 rehabilitator or liquidator is subject to the approval of
4 the court before which the delinquency proceeding is
5 pending. The court may not approve that portion of the
6 settlement if it determines:

7 (a) that the claim did not arise out of or by reason of
8 the rehabilitator's or liquidator's duties or employment; or

9 (b) that the claim was caused by the intentional or
10 willful and wanton misconduct of the rehabilitator or
11 liquidator.

12 (3) This section may not be construed to deprive the
13 rehabilitator, liquidator, or employee of immunity,
14 indemnity, benefit of law, right, or defense available under
15 any provision of law, including, without limitation, the
16 provisions of Title 2, chapter 9.

17 (4) (a) A legal action does not lie against the
18 rehabilitator, liquidator, or employee based in whole or in
19 part on any alleged act, error, or omission that took place
20 prior to October 1, 1993, unless suit is filed and valid
21 service of process is obtained by October 1, 1994.

22 (b) Subsections (1) through (3) apply to any suit that
23 is pending on or filed after October 1, 1993, without regard
24 to when the alleged act, error, or omission took place.

25 **Section 39.** Section 33-1-401, MCA, is amended to read:

1 "33-1-401. Examination of insurers. (1) The
2 commissioner shall examine the affairs, transactions,
3 accounts, records, and assets of each authorized insurer as
4 often as he deems the commissioner considers advisable. He
5 The commissioner shall so examine each domestic authorized
6 insurer not less frequently than every 3 5 years.
7 ~~Examination--of--an--alien--insurer--may--be--limited--to--its~~
8 ~~insurance--transactions--and--affairs--in--the--United--States--~~
9 ~~Examination--of--a--reciprocal--insurer--may--also--include~~
10 ~~examination--of--its--attorney-in-fact--insofar--as--the~~
11 ~~transactions--of--the--attorney-in-fact--relate--to--the--insurer--~~

12 (2) The commissioner shall in like manner examine each
13 insurer applying for an initial certificate of authority to
14 do business in this state.

15 (3) In lieu of making his own an examination under this
16 part of any foreign or alien insurer licensed in this state,
17 the commissioner may ~~in his discretion,~~ accept a full an
18 examination report ~~of the last recent examination of a~~
19 ~~foreign or alien insurer, certified to on the company~~
20 prepared by the insurance supervisory official department of
21 another for the company's state, territory, commonwealth, or
22 district of the--United--States domicile or port-of-entry
23 state until January 1, 1994. After January 1, 1994, the
24 reports may only be accepted if:

25 (a) the insurance department was at the time of the

examination accredited under the national association of insurance commissioners' financial regulation standards and accreditation program; or

(b) the examination is performed under the supervision of an accredited state insurance department or with the participation of one or more examiners who are employed by such an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(4) For purposes of completing an examination of any company under this part, the commissioner may examine or investigate any person or the business of any person, in so far as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company."

Section 40. Section 33-2-501, MCA, is amended to read:

"33-2-501. **Assets allowed.** In any determination of the financial condition of an insurer, there ~~shall~~ must be allowed as assets only such assets as that are owned by the insurer and which that consist of:

(1) cash in the possession of the insurer or in transit under its control and including the true balance of any deposit in a solvent bank or trust company;

(2) investments, securities, properties, and loans acquired or held in accordance with this code and in connection therewith the following items:

(a) interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest;

(b) declared and unpaid dividends on stock and shares unless ~~such~~ the amount has otherwise been allowed as an asset;

(c) interest due or accrued upon a collateral loan in an amount not to exceed 1 year's interest ~~thereon~~ on the loan;

(d) interest due or accrued on deposits in solvent banks and trust companies and interest due or accrued on other assets, if ~~such~~ the interest is in the judgment of the commissioner a collectible asset;

(e) interest due or accrued on a mortgage loan in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes ~~thereon~~ on the property over the unpaid principal. ~~In--no event--shall--interest~~ Interest accrued for a period in excess of 18 months may not be allowed as an asset.

(f) rent due or accrued on real property if ~~such~~ the rent is not in arrears for more than 3 months and rent more than 3 months in arrears if the payment of ~~such~~ the rent be

1 is adequately secured by property held in the name of the
2 tenant and conveyed to the insurer as collateral;

3 (g) the unaccrued portion of taxes paid prior to the
4 due date on real property;

5 (3) premium notes, policy loans, and other policy
6 assets and liens on policies and certificates of life
7 insurance and annuity contracts and accrued interest
8 thereon, in an amount not exceeding the legal reserve and
9 other policy liabilities carried on each individual policy;

10 (4) the net amount of uncollected and deferred premiums
11 and annuity considerations in the case of a life insurer;

12 (5) premiums in the course of collection, other than
13 for life insurance, not more than 3 months past due, less
14 commissions payable thereon on the premiums. The foregoing
15 limitation shall in this subsection does not apply to
16 premiums payable directly or indirectly by the United States
17 government or by any of its instrumentalities.

18 (6) installment premiums other than life insurance
19 premiums to the extent of the unearned premium reserve
20 carried on the policy to which premiums apply;

21 (7) notes and like written obligations not past due,
22 taken for premiums other than life insurance premiums, on
23 policies permitted to be issued on such that basis, to the
24 extent of the unearned premium reserves carried thereon on
25 the policies;

1 (8) the full amount of reinsurance recoverable by a
2 ceding insurer from a solvent reinsurer and which
3 reinsurance is authorized under 33-2-1205 chapter 2, part
4 12;

5 (9) amounts receivable by an assuming insurer
6 representing funds withheld by a solvent ceding insurer
7 under a reinsurance treaty;

8 (10) deposits or equities recoverable from underwriting
9 associations, syndicates, and reinsurance funds or from any
10 suspended banking institution, to the extent, deemed
11 considered by the commissioner available for the payment of
12 losses and claims and at values to be determined by him the
13 commissioner;

14 (11) electronic data processing equipment if the cost of
15 such the equipment is at least \$100,000, which cost shall
16 must be amortized in full over a period of not to exceed 10
17 calendar years. However, with regard to life insurers, such
18 the equipment shall must be allowed as an asset if the cost
19 of such the equipment is at least \$25,000, which cost shall
20 must be amortized in full over a period of not to exceed 5
21 calendar years, and the amount of such the asset allowed may
22 not exceed 1% of the total of the other allowable assets of
23 the insurer.

24 (12) all assets, whether or not consistent with the
25 provisions of this section, as may be allowed pursuant to

1 the annual statement form approved by the commissioner for
2 the kinds of insurance to be reported upon therein in the
3 annual statement;

4 (13) other assets, not inconsistent with the provisions
5 of this section, deemed considered by the commissioner to be
6 available for the payment of losses and claims, at values to
7 be determined by him the commissioner."

8 **Section 41.** Section 33-2-532, MCA, is amended to read:

9 "33-2-532. Valuation of bonds. (1) (a) All bonds or
10 other evidences of debt having a fixed term and rate of
11 interest held by an insurer may, if amply secured and not in
12 default as to principal or interest, be valued as follows:

13 (i) if purchased at par, at the par value;

14 (ii) if purchased above or below par, on the basis of
15 the purchase price adjusted ~~so-as~~ to bring the value to par
16 at maturity and ~~so-as~~ to yield in the meantime the effective
17 rate of interest at which the purchase was made, or, in lieu
18 of ~~such~~ this method, according to ~~such~~ an accepted method of
19 valuation as is approved by the commissioner by rule.

20 (b) Purchase price ~~shall-in-no-case~~ may not be taken at
21 a higher figure than the actual market value at the time of
22 purchase, plus actual brokerage, transfer, postage, or
23 express charges paid in the acquisition of ~~such~~ the
24 securities.

25 (c) Unless otherwise provided by valuation established

1 or approved by the commissioner, ~~no-such a~~ security ~~shall~~
2 may not be carried at above the call price for the entire
3 issue during any period within which the security may be so
4 called.

5 (2) The commissioner ~~shall-have~~ has full discretion in
6 determining the method of calculating values according to
7 the rules set forth in this section."

8 **Section 42.** Section 33-2-533, MCA, is amended to read:

9 "33-2-533. Valuation of other securities. (1)
10 Securities, other than those referred to in 33-2-532, held
11 by an insurer ~~shall~~ must be valued, in the discretion of the
12 commissioner, at their market value, at their appraised
13 value, or at prices determined by him the commissioner as
14 representing their fair market value as established by rule.

15 (2) Preferred or guaranteed stocks or shares while
16 paying full dividends may be carried at a fixed value in
17 lieu of market value, at the discretion of the commissioner
18 and in accordance with ~~such~~ the method of computation ~~as--he~~
19 that the commissioner may approve."

20 **Section 43.** Section 33-2-701, MCA, is amended to read:

21 "33-2-701. Annual statement -- revocation or fine for
22 failure to file -- penalty for perjury. (1) Each authorized
23 insurer shall annually on or before March 1 file with the
24 commissioner a full and true statement of its financial
25 condition, transactions, and affairs as of the December 31

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1 preceding. The statement ~~shall~~ must be in such the general
 2 form and context as is required or not disapproved by the
 3 commissioner, as is in current use for similar reports to
 4 states in general with respect to the type of insurer and
 5 kinds of insurance to be reported upon, and as supplemented
 6 for additional information required by the commissioner. The
 7 statement ~~shall~~ must be verified by the oath of the
 8 insurer's president or vice-president and secretary or, if a
 9 reciprocal insurer, by the oath of the attorney-in-fact or
 10 its like officers if a corporation. The commissioner may, ~~in~~
 11 ~~his discretion,~~ waive any such the verification under oath.

12 (2) The statement of an alien insurer ~~shall~~ must relate
 13 only to its transactions and affairs in the United States
 14 unless the commissioner requires otherwise. If the
 15 commissioner requires a statement as to an alien insurer's
 16 affairs throughout the world, the insurer shall file such
 17 the statement with the commissioner as soon as reasonably
 18 possible. The statement ~~shall~~ must be verified by the
 19 insurer's United States manager or other authorized officer
 20 duly authorized.

21 (3) The commissioner may refuse to accept the fee for
 22 continuance of the insurer's certificate of authority, as
 23 provided in 33-2-117, or ~~may in his discretion~~ suspend or
 24 revoke the certificate of authority of any insurer failing
 25 to file its annual statement when due or within an extension

1 of time that the commissioner may grant.

2 (4) Any director, officer or insurance producer, or
 3 employee of any company who subscribes to, makes, or concurs
 4 in making or publishing any annual statement or any other
 5 statement required by law knowing the same to contain any
 6 material statement which is false shall be punished by a
 7 fine of not more than \$1,000.

8 (5) At time of filing, the insurer shall pay to the
 9 commissioner the fee for filing its statement as prescribed
 10 in 33-2-708.

11 (6) The commissioner may impose a fine not to exceed
 12 \$100 a day for each day after March 1 that an insurer fails
 13 to file the annual statement referred to in subsection (1).
 14 Such The fine may not exceed a maximum of \$1,000."

15 **Section 44.** Section 33-2-708, MCA, is amended to read:

16 **"33-2-708. Fees and licenses.** (1) Except as provided in
 17 33-17-212(2), the commissioner shall collect in advance and
 18 the persons served shall pay to the commissioner the
 19 following fees:

20 (a) certificates of authority:

21 (i) for filing applications for original certificates
 22 of authority, articles of incorporation (except original
 23 articles of incorporation of domestic insurers as provided
 24 in subsection (1)(b)) and other charter documents, bylaws,
 25 financial statement, examination report, power of attorney

1 to the commissioner, and all other documents and filings
 2 required in connection with the application and for issuance
 3 of an original certificate of authority, if issued:

4 (A) domestic insurers \$ 600.00
 5 (B) foreign insurers 600.00
 6 (ii) annual continuation of certificate of authority
 7 600.00
 8 (iii) reinstatement of certificate of authority
 9 25.00
 10 (iv) amendment of certificate of authority 50.00
 11 (b) articles of incorporation:

12 (i) filing original articles of incorporation of a
 13 domestic insurer, exclusive of fees required to be paid by
 14 the corporation to the secretary of state 20.00
 15 (ii) filing amendment of articles of incorporation,
 16 domestic and foreign insurers, exclusive of fees required to
 17 be paid to the secretary of state by a domestic corporation
 18 25.00
 19 (c) filing bylaws or amendment to bylaws where
 20 required 10.00
 21 (d) filing annual statement of insurer, other than as
 22 part of application for original certificate of authority
 23 25.00
 24 (e) insurance producer's license:
 25 (i) application for original license, including

1 issuance of license, if issued 15.00
 2 (ii) appointment of insurance producer, each insurer
 3 10.00
 4 (iii) temporary license 15.00
 5 (iv) amendment of license (excluding additions to
 6 license) or reissuance of master license 15.00
 7 (f) nonresident insurance producer's license:
 8 (i) application for original license, including
 9 issuance of license, if issued 100.00
 10 (ii) appointment of insurance producer, each insurer
 11 10.00
 12 (iii) annual renewal of license 10.00
 13 (iv) amendment of license (excluding additions to
 14 license) or reissuance of master license 15.00
 15 (g) examination, if administered by the commissioner,
 16 for license as insurance producer, each examination
 17 15.00
 18 (h) surplus lines insurance producer license:
 19 (i) application for original license and for issuance
 20 of license, if issued 50.00
 21 (ii) annual renewal of license 50.00
 22 (i) adjuster's license:
 23 (i) application for original license and for issuance
 24 of license, if issued 15.00
 25 (ii) annual renewal of license 15.00

1 (j) insurance vending machine license, each machine,
 2 each year 10.00
 3 (k) commissioner's certificate under seal (except when
 4 on certificates of authority or licenses) 10.00
 5 (l) copies of documents on file in the commissioner's
 6 office, per page50
 7 (m) policy forms:
 8 (i) filing each policy form 25.00
 9 (ii) filing each application, rider, endorsement,
 10 amendment, insert page, schedule of rates, and clarification
 11 of risks 10.00
 12 (iii) maximum charge if policy and all forms submitted
 13 at one time or resubmitted for approval within 180 days
 14 100.00
 15 (n) applications for approval of prelicensing education
 16 courses:
 17 (i) reviewing initial application 150.00
 18 (ii) periodic review 50.00
 19 (2) The commissioner shall establish by rule an annual
 20 accreditation fee to be paid by each domestic and foreign
 21 insurer when it submits a fee for annual continuation of its
 22 certificate of authority.
 23 ~~(2)(3)~~ (a) The Except as provided in subsection (3)(b),
 24 the commissioner shall promptly deposit with the state
 25 treasurer to the credit of the general fund of this state

1 all fines and penalties, those amounts received pursuant to
 2 33-2-311, 33-2-705, and 33-2-706, and any fees and
 3 examination and miscellaneous charges that are collected by
 4 him the commissioner pursuant to Title 33 and the rules
 5 adopted under Title 33.

6 (b) The accreditation fee required by subsection (2)
 7 must be turned over promptly to the state treasurer who
 8 shall deposit the money in the state special revenue fund to
 9 the credit of the commissioner's office. The accreditation
 10 fee funds must be used only to pay the expenses of the
 11 commissioner's office in discharging its administrative and
 12 regulatory duties, subject to the applicable laws relating
 13 to the appropriation of state funds and to the deposit and
 14 expenditure of money. The commissioner is responsible for
 15 the proper expenditure of the accreditation money.

16 ~~(3)(4)~~ All fees are considered fully earned when
 17 received. In the event of overpayment, only those amounts in
 18 excess of \$10 will be refunded."

19 **Section 45.** Section 33-2-1111, MCA, is amended to read:

20 "33-2-1111. Registration of insurers -- requisites --
 21 termination. (1) Every insurer which is authorized to do
 22 business in this state and which is a member of an insurance
 23 holding company system shall register with the commissioner,
 24 except a foreign insurer subject to disclosure requirements
 25 and standards adopted by statute or regulation in the

1 jurisdiction of its domicile which are substantially similar
 2 to those contained in this section. Any insurer which is
 3 subject to registration under this section shall register
 4 within ~~60 days after July 17, 1971, or~~ 15 days after it
 5 becomes subject to registration, ~~whichever is later~~, unless
 6 the commissioner for good cause shown extends the time for
 7 registration, and then within such the extended time. The
 8 commissioner may require any authorized insurer which is a
 9 member of a holding company system which is not subject to
 10 registration under this section to furnish a copy of the
 11 registration statement or other information filed by such
 12 the insurance company with the insurance regulatory
 13 authority of domiciliary jurisdiction.

14 (2) Every insurer subject to registration shall file
 15 with the commissioner, on or before April 30 each year, a
 16 registration statement on a form provided by the
 17 commissioner, which must contain current information about:

18 (a) the capital structure, general financial condition,
 19 ownership, and management of the insurer and any person
 20 controlling the insurer;

21 (b) the identity of every member of the insurance
 22 holding company system;

23 (c) the following agreements in force, relationships
 24 subsisting, and transactions currently outstanding between
 25 such the insurer and its affiliates:

1 (i) loans, other investments, or purchases, sales, or
 2 exchanges of securities of the affiliates by the insurer or
 3 of the insurer by its affiliates;

4 (ii) purchases, sales, or exchanges of assets;

5 (iii) transactions not in the ordinary course of
 6 business;

7 (iv) guaranties or undertakings for the benefit of an
 8 affiliate which result in an actual contingent exposure of
 9 the insurer's assets to liability, other than insurance
 10 contracts entered into in the ordinary course of the
 11 insurer's business;

12 (v) all management and service contracts and all
 13 cost-sharing arrangements, other than cost allocation
 14 arrangements based upon generally accepted accounting
 15 principles;

16 (vi) reinsurance agreements covering all or
 17 substantially all of one or more lines of insurance of the
 18 ceding company;

19 (vii) dividends and other distributions to shareholders;
 20 and

21 (viii) consolidated tax allocation agreements;

22 (d) any pledge of the insurer's stock, including stock
 23 of a subsidiary or controlling affiliate for a loan made to
 24 a member of the insurance holding company system;

25 (e) all matters concerning transactions between

1 registered insurers and any affiliates as may be included
2 from time to time in any registration forms adopted or
3 approved by the commissioner.

4 (3) A registration statement must contain a summary
5 outlining each item in the current registration statement
6 that represents a change from the prior registration
7 statement.

8 (4) ~~No information~~ Information need not be disclosed on
9 the registration statement filed pursuant to subsection (2)
10 if ~~such the~~ information is not material for the purposes of
11 this section. Unless the commissioner by rule or order
12 provides otherwise, sales, purchases, exchanges, loans or
13 extensions of credit, or investments involving 1/2 of 1% or
14 less of an insurer's admitted assets as of December 31 next
15 preceding ~~may are~~ not be deemed material for purposes of
16 this section.

17 (5) A person within an insurance holding company system
18 subject to registration shall provide complete and accurate
19 information to an insurer if the information is reasonably
20 necessary to enable the insurer to comply with Title 33,
21 chapter 2, part 11.

22 (6) Each registered insurer shall keep current the
23 information required to be disclosed in its registration
24 statement by reporting all material changes or additions on
25 amendment forms provided by the commissioner within 15 days

1 after the end of the month in which it learns of each such
2 change or addition. ~~Except as provided in 33-2-1114, each~~
3 ~~registered insurer shall report all dividends and other~~
4 ~~distributions to shareholders within 2 business days~~
5 ~~following the declaration thereof.~~

6 (7) The commissioner shall terminate the registration
7 of any insurer which demonstrates that it no longer is a
8 member of an insurance holding company system.

9 (8) The commissioner may require or allow two or more
10 affiliated insurers subject to registration hereunder under
11 this section to file a consolidated registration statement
12 or consolidated reports amending their consolidated
13 registration statement or their individual registration
14 statements.

15 (9) The commissioner may allow an insurer which is
16 authorized to do business in this state and which is part of
17 an insurance holding company system to register on behalf of
18 any affiliated insurer which is required to register under
19 subsection (1) and to file all information and material
20 required to be filed under this section."

21 **Section 46.** Section 33-2-1114, MCA, is amended to read:

22 "33-2-1114. Dividends and other distributions --
23 commissioner approval. (1) An insurer subject to
24 registration under 33-2-1111 and 33-2-1112 may not pay any
25 extraordinary dividend or make any other extraordinary

1 distribution to its shareholders until 30 days after the
2 commissioner has received notice of the declaration thereof
3 of the dividend or distribution and has not within such the
4 period disapproved such the payment or the commissioner
5 shall--have has approved such payment within such the 30-day
6 period.

7 (2) For purposes of this section, an extraordinary
8 dividend or distribution includes any dividend or
9 distribution of cash or other property whose fair market
10 value together with that of other dividends or distributions
11 made within the preceding 12 months exceeds 10% of such the
12 insurer's surplus as regards policyholders as of December 31
13 next preceding, but shall may not include pro rata
14 distributions of any class of the insurer's own securities.

15 (3) Notwithstanding any other provision of law, an
16 insurer may declare an extraordinary dividend or
17 distribution which is conditional upon the commissioner's
18 approval thereof, and such-a the declaration shall may not
19 confer no rights upon shareholders until the commissioner
20 has approved the payment of such the dividend or
21 distribution or the commissioner has not disapproved such
22 the payment within the 30-day period referred to above in
23 subsection (1).

24 (4) An insurer subject to subsection (1) may not pay
25 any other dividend or make any other distribution to its

1 shareholders unless the insurer has notified the
2 commissioner of the payment 15 days prior to the payment
3 date. The notice must be kept confidential until the payment
4 date of the dividend. The commissioner may order that a
5 dividend not be paid if the commissioner finds that the
6 insurer's surplus as regards policyholders, following the
7 payment to shareholders, would be inadequate or could lead
8 the insurer to a hazardous financial condition."

9 Section 47. Section 33-2-1115, MCA, is amended to read:

10 "33-2-1115. Examination. (1) Subject-to-the-limitation
11 contained-in-this-section-and-in In addition to the powers
12 which the commissioner has under chapter 1, part 4, relating
13 to the examination of insurers, the commissioner shall also
14 have has the power to order any insurer registered under
15 33-2-1111 to produce such the records, books, or other
16 information papers in the possession of the insurer or its
17 affiliates as shall--be are necessary to ascertain the
18 financial condition or legality of conduct of such the
19 insurer. In--the--event-such If the insurer fails to comply
20 with such the order, the commissioner shall-have--the--power
21 to may examine such the affiliates to obtain such the
22 information.

23 (2) The-commissioner-shall--exercise--his--power--under
24 subsection--(1)--only--if--the-examination-of-the-insurer-is
25 inadequate-or-the-interests-of--the--policyholders--of--such

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~~insurer-may-be-adversely-affected:~~

{3} The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as ~~shall-be~~ are reasonably necessary to assist in the conduct of the examination under subsection (1). Any persons ~~so retained shall-be~~ are under the direction and control of the commissioner and shall act in a purely advisory capacity.

+4+(3) Each registered insurer producing for examination records, books, and papers pursuant to subsection (1) ~~shall-be~~ is liable for and shall pay the expense of such the examination."

NEW SECTION. Section 48. Recovery of dividends. (1) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order has a right to recover on behalf of the insurer:

(a) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock; or

(b) any payment in the form of a bonus, termination settlement, or extraordinary lump-sum salary adjustment made

by the insurer or its subsidiary to a director, officer, or employee, when the distribution or payment pursuant to subsection (1)(a) or this subsection is made at any time during the year preceding the petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of subsections (2) through (4).

(2) A distribution is not recoverable if the parent or affiliate shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time that the distributions were paid is liable up to the amount of distributions or payments that the person received. Any person who otherwise controlled the insurer at the time that the distributions were declared is liable up to the amount of distributions the person would have received if the person had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

(4) The maximum amount recoverable under this section is the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual

1 obligations of the impaired or insolvent insurer and to
2 reimburse any guaranty funds.

3 (5) To the extent that any person liable under
4 subsection (3) is insolvent or otherwise fails to pay claims
5 due from it, its parent corporation or holding company or
6 person who otherwise controlled it at the time the
7 distribution was paid is jointly and severally liable for
8 any resulting deficiency in the amount recovered from the
9 parent corporation or holding company or person who
10 otherwise controlled it.

11 **Section 49.** Section 33-2-1201, MCA, is amended to read:

12 "33-2-1201. Limit of risk. (1) No ~~An~~ insurer ~~shall~~ may
13 not retain any risk on any one subject of insurance, whether
14 located or to be performed in this state or elsewhere, in an
15 amount exceeding 10% of its surplus to policyholders.

16 (2) A "subject of insurance" for the purposes of this
17 section, as to insurance against fire and hazards other than
18 windstorm, earthquake, or other catastrophe hazards,
19 includes all properties insured by the same insurer which
20 are customarily considered by underwriters to be subject to
21 loss or damage from the same fire or the same occurrence of
22 such the other hazard insured against.

23 (3) Reinsurance ceded as authorized by 33-2-~~1205~~ ~~shall~~
24 this part must be deducted in determining risk retained. As
25 to surety risks, deduction ~~shall~~ must also be made of the

1 amount assumed by any established incorporated cosurety and
2 the value of any security deposited, pledged, or held
3 subject to the surety's consent and for the surety's
4 protection.

5 (4) As to alien insurers, this section ~~shall--relate~~
6 only relates to risks and surplus to policyholders of the
7 insurer's United States branch.

8 (5) "Surplus to policyholders" for the purposes of this
9 section, in addition to the insurer's capital and surplus,
10 ~~shall--be--deemed~~ is considered to include any voluntary
11 reserves which are not required pursuant to law and ~~shall--be~~
12 are determined from the last sworn statement of the insurer
13 on file with the commissioner or by the last report of
14 examination of the insurer, whichever is the more recent at
15 time of assumption of risk.

16 (6) This section ~~shall~~ does not apply to life or
17 disability insurance, title insurance, insurance of wet
18 marine and transportation risks, workers' compensation
19 insurance, employer's liability coverages, sprinklered
20 risks, or any policy or type of coverage as to which the
21 maximum possible loss to the insurer is not readily
22 ascertainable on issuance of the policy."

23 **Section 50.** Section 33-2-1331, MCA, is amended to read:

24 "33-2-1331. Grounds for rehabilitation. The
25 commissioner may apply by petition to a district court for

1 an order authorizing him the commissioner to rehabilitate a
2 domestic insurer or an alien insurer domiciled in this state
3 on any one or more of the following grounds:

4 (1) The insurer is in such condition that the further
5 transaction of business would be financially hazardous to
6 its policyholders, creditors, or the public.

7 (2) There is reasonable cause to believe that there has
8 been embezzlement from the insurer, wrongful sequestration
9 or diversion of the insurer's assets, forgery or fraud
10 affecting the insurer, or other illegal conduct in, by, or
11 with respect to the insurer that if established would
12 endanger assets in an amount threatening the solvency of the
13 insurer.

14 (3) The insurer has failed to remove any person who in
15 fact has executive authority in the insurer, whether an
16 officer, manager, general insurance producer, employee, or
17 other person, if the person has been found after notice and
18 hearing by the commissioner to be dishonest or untrustworthy
19 in a way affecting the insurer's business.

20 (4) Control of the insurer, whether by stock ownership
21 or otherwise and whether direct or indirect, is in a person
22 found after notice and hearing to be untrustworthy.

23 (5) Any person who in fact has executive authority in
24 the insurer, whether an officer, manager, general insurance
25 producer, director or trustee, employee, or other person,

1 has refused to be examined under oath by the commissioner
2 concerning its affairs, whether in this state or elsewhere,
3 and after reasonable notice of the fact the insurer has
4 failed promptly and effectively to terminate the employment
5 and status of the person and his the person's influence on
6 management.

7 (6) After demand by the commissioner under 33-1-403
8 [section 31] or under this part, the insurer has failed to
9 promptly make available for examination any of its own
10 property, books, accounts, documents, or other records or
11 those of any subsidiary or related company within the
12 control of the insurer or those of any person having
13 executive authority in the insurer so far as they pertain to
14 the insurer.

15 (7) Without first obtaining the written consent of the
16 commissioner, the insurer has transferred or attempted to
17 transfer, in a manner contrary to chapter 2, part 11, or
18 chapter 2, part 12, of Title 33, substantially its entire
19 property or business or has entered into any transaction the
20 effect of which is to merge, consolidate, or reinsure
21 substantially its entire property or business in or with the
22 property or business of any other person.

23 (8) The insurer or its property has been or is the
24 subject of an application for the appointment of a receiver,
25 trustee, custodian, conservator, or sequestrator or similar

1 fiduciary of the insurer or its property otherwise than as
2 authorized under the insurance laws of this state, and such
3 the appointment has been made or is imminent, and such the
4 appointment might oust the courts of this state of
5 jurisdiction or might prejudice orderly delinquency
6 proceedings under this part.

7 (9) Within the previous 4 years the insurer has
8 willfully violated its charter or articles of incorporation,
9 its bylaws, any insurance law of this state, or any valid
10 order of the commissioner under 33-2-1321.

11 (10) The insurer has failed to pay within 60 days after
12 the due date any obligation to any state or any subdivision
13 thereof of the state or any judgment entered in any state,
14 if the court in which such the judgment was entered had
15 jurisdiction over such the subject matter, except that such
16 nonpayment ~~shall~~ may not be a ground until 60 days after any
17 good faith effort by the insurer to contest the obligation
18 has been terminated, whether it is before the commissioner
19 or in the courts, or the insurer has systematically
20 attempted to compromise or renegotiate previously agreed
21 settlements with its creditors on the ground that it is
22 financially unable to pay its obligations in full.

23 (11) The insurer has failed to file its annual report or
24 other financial report required by statute within the time
25 allowed by law and, after written demand by the

1 commissioner, has failed to give an adequate explanation
2 immediately.

3 (12) The board of directors or the holders of a majority
4 of the shares entitled to vote request or consent to
5 rehabilitation under this part."

6 **Section 51.** Section 33-2-1342, MCA, is amended to read:

7 "33-2-1342. Liquidation orders. (1) An order to
8 liquidate the business of a domestic insurer ~~shall~~ must
9 appoint the commissioner and ~~his~~ the commissioner's
10 successors in office liquidator and shall direct the
11 liquidator ~~forthwith~~ to take possession of the assets of the
12 insurer and to administer them under the general supervision
13 of the court. The liquidator shall be vested by operation of
14 law with the title to all of the property, contracts, and
15 rights of action and all of the books and records of the
16 insurer ordered liquidated, wherever located, as of the
17 entry of the final order of liquidation. The filing or
18 recording of the order with the clerk of the district court
19 and the clerk and recorder of the county in which its
20 principal office or place of business is located or, in the
21 case of real estate, with the clerk and recorder of the
22 county where the property is located shall impart the same
23 notice as a deed, bill of sale, or other evidence of title
24 duly filed or recorded with that clerk and recorder would
25 have imparted.

(2) Upon issuance of the order, the rights and liabilities of any such insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate shall become fixed as of the date of entry of the order of liquidation, except as provided in 33-2-1343 and 33-2-1366.

(3) An order to liquidate the business of an alien insurer domiciled in this state shall must be in the same terms and have the same legal effect as an order to liquidate a domestic insurer, except that the assets and the business in the United States shall be are the only assets and business included therein in the order.

(4) At the time of petitioning for an order of liquidation or at any time thereafter after petitioning, the commissioner, after making appropriate findings of an insurer's insolvency, may petition the court for a judicial declaration of such insolvency. After providing such notice and hearing as it considers proper, the court may make the declaration.

(5) Any order issued under this section shall must require accounting to the court by the liquidator. Accountings shall must be at such intervals as the court specifies in its order.

(6) (a) Within 5 days after the initiation of an appeal of an order of liquidation that has not been stayed, the

commissioner shall present for the court's approval a plan for the continued performance of the defendant company's policy claims obligations, including the duty to defend insureds under liability insurance policies, during the pendency of an appeal. The plan must provide for the continued performance and payment of policy claims obligations in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation, including the ground of insolvency. In the event that the defendant company's financial condition will not, in the judgment of the commissioner, support the full performance of all policy claims obligations during the appeal pendency period, the plan may prefer the claims of certain policyholders and claimants over creditors and interested parties, as well as other policyholders and claimants, as the commissioner finds to be fair and equitable, considering the relative circumstances of the policyholders and claimants. The court shall examine the plan submitted by the commissioner, and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. An action does not lie against the commissioner or any of the commissioner's deputies, agents, clerks, assistants, or attorneys by any party based on preference in an appeal pendency plan approved by the court.

(b) The appeal pendency plan may not supersede or

1 affect the obligations of any insurance guaranty
2 association.

3 (c) A plan must provide for equitable adjustments to be
4 made by the liquidator to any distributions of assets to
5 guaranty associations, in the event that the liquidator pays
6 claims from assets of the estate, which would otherwise be
7 the obligations of any particular guaranty association but
8 for the appeal of the order of liquidation, so that all
9 guaranty associations equally benefit on a pro rata basis
10 from the assets of the estate. If an order of liquidation is
11 set aside upon any appeal, the company may not be released
12 from delinquency proceedings unless all funds advanced by
13 any guaranty association, including reasonable
14 administrative expenses that relate to obligations of the
15 company, have been repaid in full, together with interest at
16 the judgment rate of interest, or unless an arrangement for
17 repayment has been made with the consent of all applicable
18 guaranty associations."

19 **Section 52.** Section 33-2-1346, MCA, is amended to read:

20 "33-2-1346. Notice to creditors and others. (1) Unless
21 the court otherwise directs, the liquidator shall give or
22 cause to be given notice of the liquidation order as soon as
23 possible:

24 (a) by first-class mail and either by telegram or
25 telephone to the insurance commissioner of each jurisdiction

1 in which the insurer is doing business;

2 (b) by first-class mail to any guaranty association or
3 foreign guaranty association which is or may become
4 obligated as a result of the liquidation;

5 (c) by first-class mail to all insurance producers of
6 the insurer;

7 (d) by first-class mail to all persons known or
8 reasonably expected to have claims against the insurer,
9 including all policyholders, at their last-known address as
10 indicated by the records of the insurer; and

11 (e) by publication in a newspaper of general
12 circulation in the county in which the insurer has its
13 principal place of business and in such other locations as
14 that the liquidator considers appropriate.

15 (2) Notice to potential claimants under subsection (1)
16 ~~shall-require~~ requires claimants to file with the liquidator
17 their claims together with proper proofs thereof ~~of the~~
18 claims under 33-2-1365, on or before a date the liquidator
19 ~~shall-specify~~ specifies in the notice. The liquidator need
20 not require persons claiming cash surrender values or other
21 investment values in life insurance and annuities to file a
22 claim. All claimants have a duty to keep the liquidator
23 informed of any changes of address.

24 (3) (a) Notice under subsection (1) to insurance
25 producers of the insurer and to potential claimants who are

1 policyholders must include, when applicable, notice that
 2 coverage by state guaranty associations may be available for
 3 all or part of policy benefits in accordance with applicable
 4 state guaranty laws.

5 (b) The liquidator shall promptly provide to the
 6 guaranty associations information concerning the identities
 7 and addresses of the policyholders and their policy
 8 coverages as is within the liquidator's possession or
 9 control and shall otherwise cooperate with guaranty
 10 associations to assist them in providing to the
 11 policyholders timely notice of the guaranty associations'
 12 coverage of policy benefits, including coverage of claims
 13 and continuation or termination of coverages.

14 (3)(4) If notice is given in accordance with this
 15 section, the distribution of assets of the insurer under
 16 this part shall be is conclusive with respect to all
 17 claimants, whether or not they received notice."

18 **Section 53.** Section 33-10-105, MCA, is amended to read:

19 "33-10-105. General powers and duties. (1) The
 20 association shall:

21 (a) (i) is be obligated to the extent of the covered
 22 claims existing prior to the determination of insolvency and
 23 arising within 30 days after the determination of insolvency
 24 or before the policy expiration date if less than 30 days
 25 after the determination or before the insured replaces the

1 policy or causes its cancellation if he the insured does so
 2 within 30 days of the determination;

3 (ii) but such obligation shall include is obligated
 4 under subsection (1)(a)(i) only for that amount of each
 5 covered claim which that is in excess of \$100 and is less
 6 than \$300,000, except that:

7 (A) the association shall pay an amount not exceeding
 8 \$10,000 per policy for a covered claim for the return of
 9 unearned premium; and

10 (B) the association shall pay the full amount of any
 11 covered claim arising out of a workers' compensation
 12 policy; and

13 (iii) in no event shall the association be is not
 14 obligated to a policyholder or claimant in an amount in
 15 excess of the obligation of the insolvent insurer under the
 16 policy from which the claim arises;

17 (b) be deemed is considered the insurer to the extent
 18 of its obligation on the covered claims and to such that
 19 extent shall have has all rights, duties, and obligations of
 20 the insolvent insurer as if the insurer had not become
 21 insolvent;

22 (c) shall investigate claims brought against the
 23 association and adjust, compromise, settle, and pay covered
 24 claims to the extent of the association's obligation and
 25 deny all other claims and may review settlements, releases,

and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such the settlements, releases, and judgments may be properly contested;

(d) shall notify such persons as the commissioner directs under 33-10-109(2)(a);

(e) shall handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such the designation may be declined by a member insurer.

(f) shall reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this part.

(2) The association may:

(a) employ or retain such persons as are necessary to handle claims and perform other duties of the association;

(b) borrow funds necessary to effect the purposes of this part in accord with the plan of operation;

(c) sue or be sued;

(d) negotiate and become a party to such contracts as are necessary to carry out the purpose of this part;

(e) perform such other acts as are necessary or proper

to effectuate the purpose of this part;

(f) refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year."

Section 54. Section 33-10-111, MCA, is amended to read:

"33-10-111. Stay of proceedings -- reopening of default judgments. (1) All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state ~~shall~~ must be stayed for ~~60-days~~ 6 months from the date the insolvency is determined or an ancillary proceeding is instituted in the state, whichever is later, or must be stayed for any additional time as may be determined by the court in order to permit proper defense by the association of all pending causes of action.

(2) As to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of such the insured may apply to have such the judgment, order, decision, verdict, or finding set aside by the same court or administrator that made such the judgment,

2

1 order, decision, verdict, or finding and ~~shall~~ must be
2 permitted to defend against such the claim on the merits."

3 **Section 55.** Section 33-10-114, MCA, is amended to read:

4 "33-10-114. Claims -- effect as to insured and
5 receiver. (1) Any person recovering under this part ~~shall be~~
6 deemed is considered to have assigned ~~his~~ the person's
7 rights under the policy to the association to the extent of
8 ~~his~~ the person's recovery from the association. Every
9 insured or claimant seeking the protection of this part
10 shall cooperate with the association to the same extent as
11 such that the person would have been required to cooperate
12 with the insolvent insurer. The association shall does not
13 have no a cause of action against the insured of the
14 insolvent insurer for any sums it has paid out except such
15 causes of action as that the insolvent insurer would have
16 had if such the sums had been paid by the insolvent insurer.
17 In the case of an insolvent insurer operating on a plan with
18 assessment liability, payments of claims of the association
19 ~~shall may~~ not operate to reduce the liability of insured's
20 insureds to the receiver, liquidator, or statutory successor
21 for unpaid assessments.

22 (2) The association has the right to recover from the
23 following persons the amount of any "covered claim" paid on
24 behalf of the person pursuant to this part:

25 (a) any insured whose net worth, on December 31 of the

1 year preceding the date the insurer becomes an insolvent
2 insurer, exceeds \$50 million and whose liability obligations
3 to other persons are satisfied in whole or in part by
4 payments made under this part; and

5 (b) any person who is an affiliate of the insolvent
6 insurer and whose liability obligations to other persons are
7 satisfied in whole or in part by payments made under this
8 part.

9 (2)(3) The receiver, liquidator, or statutory successor
10 of an insolvent insurer shall be is bound by settlements of
11 covered claims by the association or a similar organization
12 in another state. The court having jurisdiction shall grant
13 such the claims priority equal to that which the claimant
14 would have been entitled in the absence of this part against
15 the assets of the insolvent insurer. The expenses of the
16 association or similar organization in handling claims ~~shall~~
17 must be accorded the same priority as the liquidator's
18 expenses.

19 (3)(4) The association shall periodically file with the
20 receiver or liquidator of the insolvent insurer statements
21 of the covered claims paid by the association and estimates
22 of anticipated claims on the association which shall
23 preserve the rights of the association against the assets of
24 the insolvent insurer."

25 **Section 56.** Section 33-10-201, MCA, is amended to read:

"33-10-201. Short title, purpose, scope, and construction. (1) This part shall be known and may be cited as the "Montana Life and Health Insurance Guaranty Association Act".

(2) The purpose of this part is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment of the insurer issuing such the policies or contracts.

(3) To provide this protection:

(a) an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages;

(b) members of the association are subject to assessment to provide funds to carry out the purpose of this part; and

(c) the association is authorized to assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments.

(4) This part ~~shall--apply~~ applies to direct life insurance--policies,--health--insurance--policies,--annuity contracts,--and--contracts--supplemental--to--life--and--health insurance-policies--and--annuity--contracts--issued--by--persons

~~authorized--to--transact--insurance--in--this--state--at--any--time,~~
~~nongroup life, health, annuity, and supplemental policies or~~
~~contracts, to certificates under direct group policies and~~
~~contracts, and to unallocated annuity contracts issued by~~
~~member insurers, except as limited by this part. Annuity~~
~~contracts and certificates under group annuity contracts~~
~~include but are not limited to guaranteed investment~~
~~contracts, deposit administration contracts, unallocated~~
~~funding agreements, allocated funding agreements, structured~~
~~settlement agreements, lottery contracts, and any immediate~~
~~or deferred annuity contracts.~~

(5) This part ~~shall--provide~~ provides coverage for covered policies:

(a) to persons who are owners of or certificate holders under such covered policies, and who:

(i) are residents; or

(ii) are not residents, but only under all of the following conditions:

(A) the insurers that issued the policies are domiciled in this state;

(B) the insurers have not held a license or certificate of authority in the state in which the persons reside;

(C) the state has an association similar to the association created under this part; and

(D) the persons are not eligible for coverage by that

1 association; and

2 (b) to persons who, regardless of where they reside,
3 except for nonresident certificate holders under group
4 policies or contracts, are the beneficiaries, assignees, or
5 payees of the persons covered under subsection (5)(a).

6 (6) This part ~~shall~~ may not apply to:

7 (a) any ~~such~~ policies or contracts or any part of ~~such~~
8 ~~the~~ policies or contracts under which the risk is borne by
9 the policyholder;

10 (b) any ~~such~~ policy or contract or part thereof ~~of the~~
11 ~~policy or contract~~ assumed by the impaired insurer under a
12 contract of reinsurance, other than reinsurance for which
13 assumption certificates have been issued;

14 (c) any portion of a policy or contract to the extent
15 that the rate of interest on which it is based:

16 (i) averaged over the period of 4 years prior to the
17 date on which the association becomes obligated with respect
18 to the policy or contract, exceeds a rate of interest
19 determined by subtracting 2 percentage points from Moody's
20 corporate bond yield average averaged for that same 4-year
21 period or for the lesser period if the policy or contract
22 was issued less than 4 years before the association became
23 obligated; and

24 (ii) on and after the date on which the association
25 becomes obligated with respect to the policy or contract,

1 exceeds the rate of interest determined by subtracting 3
2 percentage points from Moody's corporate bond yield average
3 as is most recently available;

4 (d) any plan or program of an employer, association, or
5 similar entity to provide life, health, or annuity benefits
6 to its employees or members to the extent that the plan or
7 program is self-funded or uninsured, including but not
8 limited to benefits payable by an employer, association, or
9 similar entity under:

10 (i) a multiple employer welfare arrangement, as defined
11 in section 514 of the Employee Retirement Income Security
12 Act of 1974, as amended;

13 (ii) a minimum premium group insurance plan;

14 (iii) a stop-loss group insurance plan; or

15 (iv) an administrative services only contract;

16 (e) any portion of a policy or contract to the extent
17 that it provides dividends or experience rating credits or
18 provides that any fees or allowances be paid to any person,
19 including the policy or contract holder, in connection with
20 the service to or administration of the policy or contract;

21 (f) any policy or contract issued in this state by a
22 member insurer at a time when it was not licensed or did not
23 have a certificate of authority to issue the policy or
24 contract in this state;

25 (g) any unallocated annuity contract issued to an

1 employee benefit plan that is protected under the federal
2 pension benefit guaranty corporation; and

3 (h) any portion of any unallocated annuity contract
4 that is not issued to or in connection with a specific
5 employee, union, or association of natural persons benefit
6 plan or a government lottery.

7 (7) This part ~~shall~~ must be liberally construed to
8 effect the purpose under subsections (2) and (3), which
9 ~~shall~~ constitute an aid and guide to interpretation.

10 (8) ~~Nothing--in--this~~ This part shall may not be
11 construed to reduce the liability for unpaid assessments of
12 the insureds of an impaired insurer operating under a plan
13 with assessment liability."

14 **Section 57.** Section 33-10-202, MCA, is amended to read:

15 "33-10-202. Definitions. As used in this part, the
16 following definitions apply:

17 (1) "Account" means any of the three accounts created
18 under 33-10-203.

19 (2) "Association" means the Montana life and health
20 insurance guaranty association created under 33-10-203.

21 (3) "Contractual obligation" means any obligation under
22 covered policies.

23 (4) "Covered policy" means any policy or contract
24 within the scope of this part under subsections (4) through

25 (6) of 33-10-201.

1 (5) "Impaired insurer" means:

2 (a) an insurer which after July 1, 1974, becomes
3 insolvent and is placed under a final order of liquidation,
4 rehabilitation, or supervision by a court of competent
5 jurisdiction; or

6 (b) an insurer deemed considered by the commissioner
7 after July 1, 1974, to be unable or potentially unable to
8 fulfill its contractual obligations.

9 (6) "Member insurer" means any person authorized to
10 transact in this state any kind of insurance to which this
11 part applies under subsections (4) and (6) of 33-10-201.

12 (7) "Person" means any individual, corporation,
13 partnership, association, or voluntary organization.

14 (8) "Premiums" means direct gross insurance premiums
15 and annuity considerations written on covered policies, less
16 return premiums and considerations thereon on premiums and
17 dividends paid or credited to policyholders on such the
18 direct business. "Premiums" do not include premiums and
19 considerations on contracts between insurers and reinsurers.
20 As used in 33-10-227, "premiums" are those for the calendar
21 year preceding the determination of impairment.

22 (9) "Resident" means any person who resides in this
23 state at the time the impairment is determined and to whom
24 contractual obligations are owed.

25 (10) "Unallocated annuity contract" means an annuity

contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of annuity benefits guaranteed to an individual by the insurer under the contract or certificate."

Section 58. Section 33-10-203, MCA, is amended to read:

"33-10-203. Creation of the association -- accounts -- supervision by commissioner. (1) There is created a nonprofit legal entity to be known as the Montana life and health insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under 33-10-216 and shall exercise its powers through a board of directors established under 33-10-204.

(2) For purposes of administration and assessment, the association shall maintain ~~three~~ two accounts:

- (a) the health insurance account; and
- (b) the life insurance and annuity account that includes the following subaccounts ~~and~~
 - ~~for the annuity account:~~
 - (i) the life insurance account;
 - (ii) the annuity account; and
 - (iii) the unallocated annuity account that must include unallocated annuity contracts qualified under section 403(b)

of the Internal Revenue Code.

(3) The association ~~shall come~~ is under the immediate supervision of the commissioner and ~~shall be~~ is subject to the applicable provisions of the insurance laws of this state. Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association."

Section 59. Section 33-10-210, MCA, is amended to read:

"33-10-210. Unfair trade practice -- notice to policyholders. (1) It ~~shall be~~ is a prohibited unfair trade practice for any person to make use in any manner of the protection afforded by this part in the sale of insurance.

(2) Within 180 days after October 1, 1993, the association shall prepare a summary document, complying with subsection (3) and describing the general purposes and current limitations of this part. The document must be submitted to the commissioner for approval. Sixty days after receiving approval, an insurer may not deliver a policy or contract described in 33-10-201(4) to a policy or contract holder unless the document is delivered to the policy or contract holder prior to or at the time of delivery of the policy or contract, unless subsection (4) applies. The document must be available upon request by a policyholder. The distribution, delivery, contents, or interpretation of this document does not mean that either the policy or the

1 contract or the holder of the policy or contract would be
 2 covered in the event of the impairment or insolvency of a
 3 member insurer. The description document must be revised by
 4 the association as amendments to this part may require.
 5 Failure to receive this document does not give the
 6 policyholder, contract holder, certificate holder, or
 7 insured any greater rights than those stated in this part.

8 (3) The document prepared under subsection (2) must
 9 contain a clear and conspicuous disclaimer on its face. The
 10 commissioner shall promulgate a rule establishing the form
 11 and content of the disclaimer. The disclaimer must:

12 (a) state the name and address of the life and health
 13 insurance guaranty association and insurance department;

14 (b) prominently warn the policy or contract holder that
 15 the life and health insurance guaranty association may not
 16 cover the policy or, if coverage is available, it will be
 17 subject to substantial limitations and exclusions and
 18 conditioned on continued residence in the state;

19 (c) state that the insurer and its insurance producers
 20 are prohibited by law from using the existence of the life
 21 and health insurance guaranty association for the purpose of
 22 sales, solicitation, or inducement to purchase any form of
 23 insurance;

24 (d) emphasize that the policy or contract holder should
 25 not rely on coverage under the life and health insurance

1 guaranty association when selecting an insurer;

2 (e) provide other information as directed by the
 3 commissioner.

4 (4) An insurer or insurance producer may not deliver a
 5 policy or contract described in 33-10-201(4) and excluded
 6 under 33-10-201(6)(a) from coverage under this part unless
 7 the insurer or insurance producer, prior to or at the time
 8 of delivery, gives the policy or contract holder a separate
 9 written notice that clearly and conspicuously discloses that
 10 the policy or contract is not covered by the life and health
 11 insurance guaranty association.

12 (5) The commissioner shall by rule specify the form and
 13 content of the notice required under subsection (4)."

14 **Section 60.** Section 33-10-217, MCA, is amended to read:

15 **"33-10-217. Prevention of insolvencies or impairments.**

16 (1) To aid in the detection and prevention of insurer
 17 insolvencies or impairments the-board-of-directors-is--given
 18 the-following-powers-and-duties, the commissioner shall:

19 (a) (i) notify the commissioners of all the other
 20 states, the territories of the United States, and the
 21 District of Columbia when the commissioner takes any of the
 22 following actions against a member insurer:

23 (A) the revocation of a license;

24 (B) the suspension of a license; or

25 (C) the issuance of any formal order that the company

1 restrict its premium writing, obtain additional
 2 contributions to surplus, withdraw from the state, reinsure
 3 all or any part of its business, or increase capital,
 4 surplus, or any other account for the security of
 5 policyholders or creditors;

6 (ii) mail the notice to all commissioners within 30 days
 7 following the action taken or the date on which the action
 8 occurs;

9 (b) report to the board of directors when the
 10 commissioner has taken any of the actions set forth in
 11 subsection (1)(a) or has received a report from any other
 12 commissioner indicating that an action has been taken in
 13 another state. The report to the board of directors must
 14 contain all significant details of the action taken or the
 15 report received from another commissioner.

16 (c) report to the board of directors when the
 17 commissioner has reasonable cause to believe from any
 18 examination, whether completed or in process, of any member
 19 company that the company may be an impaired or insolvent
 20 insurer; and

21 (d) furnish to the board of directors the national
 22 association of insurance commissioners' insurance regulatory
 23 information system (IRIS) ratios and listings of companies
 24 not included in the ratios developed by the national
 25 association of insurance commissioners. The board of

1 directors may use the information contained in the ratios
 2 and listings in carrying out its duties and responsibilities
 3 under this section. The report and the information contained
 4 in the ratios and listings must be kept confidential by the
 5 board of directors until the time it is made public by the
 6 commissioner or other lawful authority.

7 (2) The commissioner may seek the advice and
 8 recommendations of the board of directors concerning any
 9 matter affecting the commissioner's duties and
 10 responsibilities regarding the financial condition of member
 11 insurers and companies seeking admission to transact
 12 insurance business in this state.

13 {1}(3) The board of directors shall, upon majority
 14 vote, notify the commissioner of any information indicating
 15 any member insurer may be unable or potentially unable to
 16 fulfill its contractual obligations.

17 {2}(4) The board of directors may, upon majority vote,
 18 request that the commissioner order an examination of any
 19 member insurer which the board in good faith believes may be
 20 unable or potentially unable to fulfill its contractual
 21 obligations.

22 {3}(5) The board of directors may, upon majority vote,
 23 make reports and recommendations to the commissioner upon
 24 any matter germane to the solvency, liquidation,
 25 rehabilitation, or supervision of any member insurer. Such

1 The reports and recommendations ~~shall~~ are not be considered
2 public documents.

3 ~~{4}{6}~~ The board of directors may, upon majority vote,
4 make recommendations to the commissioner for the detection
5 and prevention of insurer impairments.

6 ~~{5}{7}~~ The board of directors shall, at the conclusion
7 of any insurer impairment in which the association carried
8 out its duties under this part or exercised any of its
9 powers under this part, prepare a report on the history and
10 causes of such the impairment, based on the information
11 available to the association, and submit such the report to
12 the commissioner. The board of directors shall cooperate
13 with the boards of directors of guaranty associations in
14 other states in preparing a report on the history and causes
15 of insolvency of a particular insurer and may adopt by
16 reference any report prepared by other associations."

17 **Section 61.** Section 33-10-218, MCA, is amended to read:

18 "33-10-218. Examination by commissioner -- cost. (1)
19 The commissioner may conduct the examination requested by
20 the board pursuant to 33-10-217~~{2}~~{4}. The examination may
21 be conducted as a national association of insurance
22 commissioners examination or may be conducted by such
23 persons as whom the commissioner designates. The cost of
24 such the examination ~~shall~~ must be paid by the association,
25 and the examination report ~~shall~~ must be treated as are

1 other examination reports.

2 (2) ~~In-no-event-shall-such~~ The examination report may
3 not be released to the board of directors of the association
4 prior to its release to the public, but this ~~shall~~ may not
5 excuse the commissioner from ~~his~~ the obligation to comply
6 with subsection (4). The commissioner shall notify the board
7 of directors when the examination is completed.

8 (3) The request for an examination ~~shall~~ must be kept
9 on file by the commissioner, but it ~~shall~~ may not be open to
10 public inspection prior to the release of the examination
11 report to the public and ~~shall~~ must be released at that time
12 only if the examination discloses that the examined insurer
13 is unable or potentially unable to meet its contractual
14 obligations.

15 (4) The commissioner shall report to the board of
16 directors when ~~he~~ the commissioner has reasonable cause to
17 believe that any member insurer examined at the request of
18 the board of directors may be unable or potentially unable
19 to fulfill its contractual obligations."

20 **Section 62.** Section 33-10-224, MCA, is amended to read:

21 "33-10-224. Extent of liability. The benefits for which
22 the association may become liable may not exceed the lesser
23 of:

24 (1) the contractual obligations of the impaired insurer
25 for which the association insurer becomes or may would have

become liable ~~shall be as great as but no greater than the contractual obligations of the impaired insurer would have been in the absence of an impairment unless such obligations are reduced as permitted by 33-10-220(3), but the association shall have no liability if it were not an impaired or insolvent insurer; or~~

(2) (a) with respect to any portion of a covered policy to the extent that the death benefit coverage on any one life, regardless of the number of policies or contracts:

(i) exceeds an aggregate of \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash surrender and net cash withdrawal values for life insurance;

(ii) \$100,000 in health insurance benefits, including any net cash surrender and net cash withdrawal values;

(iii) \$100,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(b) with respect to each individual participating in a governmental retirement plan established under section 401, 403(b), or 457 of the Internal Revenue Code and covered by an unallocated annuity contract or with respect to the beneficiaries of each individual, if deceased, in the aggregate, \$100,000 in present value annuity benefits, including net cash surrender and net cash withdrawal values. However, the association is not liable to expend more than \$300,000 in the aggregate with respect to any one individual

under subsection (2)(a) and this subsection.

(c) with respect to any one contract holder covered by any unallocated annuity contract not included in subsection (2)(b), \$5 million in benefits, irrespective of the number of contracts held by that contract holder."

Section 63: Section 33-11-103, MCA, is amended to read:

"33-11-103. Chartering -- licensing -- plan of operation. (1) A risk retention group seeking to be chartered in this state must be chartered and licensed to write only as a casualty insurer insurance pursuant to the insurance laws of this state and, except as provided in this part, must shall comply with all of the laws, rules, regulations, and requirements applicable to such the insurers chartered and authorized in this state, including 33-11-104, to the extent such that the requirements are not a limitation on laws, rules, regulations, or requirements of this state. Before it may offer insurance in any state, the risk retention group shall also submit for approval to the commissioner a plan of operation or a feasibility study and revisions of such the plan or study if the group intends to offer any additional lines of liability insurance.

(2) At the time of filing its application for charter, the risk retention group shall provide to the commissioner in summary form the following information:

(a) the identity of the initial members of the risk

1 retention group;

2 (b) the identity of those individuals who organized the
3 risk retention group or who will provide administrative
4 services or otherwise influence or control the activities of
5 the risk retention group;

6 (c) the amount and nature of initial capitalization;

7 (d) the coverages to be afforded; and

8 (e) the states in which the risk retention group
9 intends to operate.

10 (3) Upon receipt of the information required under
11 subsection (2), the commissioner shall forward the
12 information to the national association of insurance
13 commissioners. Providing this information to the national
14 association of insurance commissioners does not satisfy the
15 requirements of 33-11-104 or any other section of this
16 chapter.

17 (4) All risk retention groups chartered in this state
18 shall file with the department and the national association
19 of insurance commissioners an annual statement in a form
20 prescribed by the national association of insurance
21 commissioners and in diskette form, if required by the
22 commissioner, and completed in accordance with its
23 instructions and the national association of insurance
24 commissioners' accounting practices and procedures manual."

25 **Section 64.** Section 33-11-104, MCA, is amended to read:

1 **"33-11-104. Risk retention groups not chartered in this**
2 **state. A risk retention group chartered in a state other**
3 **than this state and seeking to do business as a risk**
4 **retention group in this state must observe and abide by the**
5 **laws of this state as follows:**

6 **(1) Before offering insurance in this state, a risk**
7 **retention group shall submit to the commissioner:**

8 **(a) a statement identifying the state or states where**
9 **the risk retention group is chartered and authorized as a**
10 **casualty insurer, date of chartering, its principal place of**
11 **business, and such other information, including information**
12 **on its membership, as the commissioner requires to verify**
13 **that the risk retention group is qualified under**
14 **33-11-102(7);**

15 **(b) a copy of its plan of operation or a feasibility**
16 **study and revisions of such the plan or study submitted to**
17 **its state of domicile. However, this provision relating to**
18 **the submission of a plan of operation or a feasibility study**
19 **does not apply with respect to any line or classification of**
20 **liability insurance that was defined in the federal Product**
21 **Liability Risk Retention Act of 1981 (15 U.S.C. 3901 through**
22 **3904) before it was amended by P.L. 99-563, approved on**
23 **October 27, 1986, and that was offered before that date by a**
24 **risk retention group that had been chartered and operated**
25 **for not less than 3 years before that date; and**

(c) a statement of registration that designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

(2) A risk retention group doing business in this state shall submit to the commissioner:

(a) a copy of the group's financial statement submitted to its state of domicile, which must be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or by a qualified loss reserve specialist under criteria established by the national association of insurance commissioners;

(b) a copy of each examination of the risk retention group as certified by the insurance regulatory official of the state in which the examination was conducted or public official conducting the examination;

(c) upon request by the commissioner, a copy of any audit performed with respect to the risk retention group; and

(d) such information as may be required to verify the group's continuing qualification as a risk retention group under 33-11-102(7).

(3) (a) All premiums paid for coverage within this state to Each risk retention groups are subject to taxation at the same rate and to the same group is liable for the

payment of premium taxes and taxes on premiums of direct business for risks resident or located within this state and shall report to the commissioner the net premiums written for risks resident or located within this state. The risk retention group is subject to taxation and any applicable interest, fines, and penalties for nonpayment that apply to foreign admitted insurers.

(b) To the extent that an insurance producer is used, he the insurance producer shall report and pay the taxes for the premiums for risks that he has to the commissioner the premiums of direct business for risks resident or located within this state that the licensees have placed with or on behalf of a risk retention group not chartered in this state.

(c) To the extent that an insurance producer is not used or fails to pay the tax, each risk retention group shall pay the tax for risks insured within the state. Further, each risk retention group shall report all premiums paid to it for risks insured within the state, the insurance producer shall keep a complete and separate record of all policies procured from each risk retention group. The record is open to examination by the commissioner, as provided in 33-1-403. The records must, for each policy and each kind of insurance provided under the policy, include the limit of liability, the time period covered, the effective date, the

name of the risk retention group that issued the policy, the gross premium charged, and the amount of return premiums, if any.

(4) Each risk retention group, its insurance producers, and its representatives shall comply with Title 33, chapter 18, part 2.

(5) Each risk retention group shall comply with the provisions of Title 33, chapter 18, part 2, regarding deceptive, false, or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding such the risk retention group's conduct, the injunction must be obtained from a court of competent jurisdiction.

(6) Each risk retention group shall submit to an examination by the commissioner to determine its financial condition if the insurance regulatory official of the jurisdiction where the group is chartered has not initiated an examination or does not initiate an examination within 60 days after a request by the commissioner. The examination must be coordinated to avoid unjustified repetition and be conducted in an expeditious manner in accordance with the national association of insurance commissioners examiners handbook.

(7) Each policy issued by a risk retention group must contain, in 10-point type on the front page and the declaration page, the following notice:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group."

(8) The following acts by a risk retention group are prohibited:

(a) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the group; and

(b) the solicitation or sale of insurance by or operation of a risk retention group that is in a hazardous financial condition or is financially impaired.

(9) A risk retention group is not allowed to do business in this state if an insurer is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurers.

(10) A risk retention group may not offer insurance policy coverage declared unlawful by the Montana supreme court.

(11) A risk retention group not chartered in this state and doing business in this state must comply with a lawful order issued in a voluntary dissolution proceeding or in a

delinquency proceeding commenced by the insurance regulatory official of any state if there has been a finding of financial impairment after an examination under subsection (6)."

Section 65. Section 33-11-105, MCA, is amended to read:

"33-11-105. Compulsory associations. (1) A risk retention group may not join or contribute financially to any insurance insolvency guaranty fund or similar mechanism in this state. In addition, a risk retention group or its insureds may not receive any benefit from any such guaranty fund for claims arising out of the operations of the risk retention group.

(2) A risk retention group shall participate in this state's joint underwriting associations, mandatory liability pools, and similar mechanisms ~~as provided by Title 33, chapter 8 (now terminated).~~

(3) When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this state or from a risk retention group, the risks, wherever resident or located, may not be covered by any insurance guaranty fund or similar mechanism in this state.

(4) When a purchasing group obtains insurance covering its members' risks from an authorized insurer, only risks resident or located in this state may be covered by the state guaranty fund, subject to Title 33, chapter 10, part

1."

Section 66. Section 33-11-108, MCA, is amended to read:

"33-11-108. Notice and registration requirements of purchasing groups. (1) A purchasing group that intends to do business in this state shall furnish notice to the commissioner that:

(a) identifies the state where the group is domiciled and all other states in which the group intends to do business;

(b) specifies the lines and classifications of liability insurance that the purchasing group intends to purchase;

(c) identifies the insurer from which the purchasing group intends to purchase its insurance and the domicile of the insurer;

(d) identifies the Montana-licensed insurance producer or Montana-licensed surplus insurance lines producer through which the purchasing group intends to place its business;

(e) identifies the principal place of business of the purchasing group; and

(f) provides information required by the commissioner to verify that the purchasing group is qualified under 33-11-102(6).

(2) The purchasing group shall register with and designate the commissioner as its agent solely for the

1 purpose of receiving service of legal documents or process.
 2 However, such the requirements do not apply in the case of a
 3 purchasing group:

4 (a) (i) that was domiciled before April 2, 1986, in any
 5 state of the United States; and

6 (ii) that was domiciled on and after October 27, 1986,
 7 in any state of the United States;

8 (b) (i) that, before October 27, 1986, purchased
 9 insurance from an insurer licensed in any state; and

10 (ii) that, since October 27, 1986, purchased its
 11 insurance from an insurer licensed in any state;

12 (c) that was a purchasing group under the requirements
 13 of the federal Product Liability Risk Retention Act of 1981
 14 (15 U.S.C. 3901 through 3904) before it was amended by P.L.
 15 99-563, approved on October 27, 1986; and

16 (d) that does not purchase insurance that was not
 17 authorized for purposes of an exemption under the federal
 18 Product Liability Risk Retention Act of 1981, as in effect
 19 before October 27, 1986."

20 **Section 67.** Section 33-11-109, MCA, is amended to read:

21 "33-11-109. Restriction on insurance purchased by
 22 purchasing groups. (1) A purchasing group may not purchase
 23 insurance from a risk retention group that is not chartered
 24 in a state or from an insurer not authorized in the state
 25 where the purchasing group is located, unless the purchase

1 is effected through a licensed insurance producer ~~or-broker~~
 2 acting pursuant to the surplus lines laws and regulations of
 3 that state.

4 (2) For purposes of subsection (1), the state where a
 5 purchasing group is located is each state where a member of
 6 the purchasing group has a risk resident, located, or to be
 7 performed.

8 (3) A purchasing group that obtains liability insurance
 9 from an insurer not admitted in this state or from a risk
 10 retention group shall inform each of the members of the
 11 group who have a risk resident or located in this state that
 12 the risk is not protected by an insurance insolvency
 13 guaranty fund in this state and that the insurer or risk
 14 retention group may not be subject to all insurance laws and
 15 regulations of this state.

16 (4) A purchasing group may not purchase insurance that
 17 provides for a deductible or self-insured retention
 18 applicable to the group as a whole. Coverage may provide for
 19 a deductible or self-insured retention applicable to
 20 individual members.

21 (5) Purchases of insurance by purchasing groups are
 22 subject to the same standards regarding aggregate limits
 23 that are applicable to all purchases of group insurance."

24 **Section 68.** Section 33-22-804, MCA, is amended to read:

25 "33-22-804. Corporate powers of association --

1 ~~examination of books.~~ (1) Any association formed for the
 2 ~~purposes of this part may hold title to property, may enter~~
 3 ~~into contracts, and may limit the liability of its members~~
 4 ~~to their respective pro rata shares of the liability of such~~
 5 ~~the association. Any such~~ An association may sue and be sued
 6 in its associate name and for ~~such that~~ purpose only ~~shall~~
 7 ~~must~~ be treated as a domestic corporation. Service of
 8 process against ~~such the~~ association made upon a managing
 9 insurance producer, any member ~~thereof of the association,~~
 10 or any insurance producer authorized by appointment to
 11 receive service of process ~~shall have~~ has the same force and
 12 effect as if ~~such~~ service had been made upon all members of
 13 the association.

14 (2) ~~Such The~~ association's books and records ~~shall must~~
 15 also be subject to examination under the provisions of
 16 33-1-315, 33-1-316, and 33-1-401, 33-1-402, 33-1-411,
 17 through 33-1-413, and [section 32], either separately or
 18 concurrently with examination of any of its member
 19 insurers."

20 NEW SECTION. Section 69. Repealer. Sections 33-1-403,
 21 33-1-412, 33-2-1205, and 33-10-229, MCA, are repealed.

22 NEW SECTION. Section 70. Codification instruction. (1)
 23 [Sections 1 through 27] are intended to be codified as an
 24 integral part of Title 33, and the provisions of Title 33
 25 apply to [sections 1 through 27].

1 (2) [Sections 28 through 30] are intended to be
 2 codified as an integral part of Title 33, chapter 2, part
 3 12, and the provisions of Title 33, chapter 2, part 12,
 4 apply to [sections 28 through 30].

5 (3) [Sections 31 through 33] are intended to be
 6 codified as an integral part of Title 33, chapter 1, part 4,
 7 and the provisions of Title 33, chapter 1, part 4, apply to
 8 [sections 31 through 33].

9 (4) [Section 34] is intended to be codified as an
 10 integral part of Title 33, chapter 11, and the provisions of
 11 Title 33, chapter 11, apply to [section 34].

12 (5) [Sections 35 through 38] are intended to be
 13 codified as an integral part of Title 33, chapter 2, part
 14 13, and the provisions of Title 33, chapter 2, part 13,
 15 apply to [sections 35 through 38].

16 (6) [Section 48] is intended to be codified as an
 17 integral part of Title 33, chapter 2, part 11, and the
 18 provisions of Title 33, chapter 2, part 11, apply to
 19 [section 48].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0430, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act generally revising the laws relating to insurers; providing regulation of business transacted with producer-controlled insurers; providing credit for reinsurance; regulating managing general agents; providing for interstate exchange of insurer regulatory information; regulating reinsurance intermediaries; revising the laws regulating insurance holding companies, life and health and casualty and property insurance guaranty associations, insurer financial examinations, risk retention groups, and insurer supervision, rehabilitation, and liquidation; providing for an annual accreditation fee.

ASSUMPTIONS:

1. Montana will meet standards established as an "accredited state" by the National Association of Insurance Commissioners.
2. The Commissioner of Insurance (State Auditor) will adopt rules implementing provisions of the accreditation act.
3. The Commissioner of Insurance will establish procedures necessary for accreditation.
4. 6.00 FTE will be added to the Insurance Program to implement and manage the accreditation process. These include 1.00 actuary, 1.00 grade 18 senior examiner, 1.00 grade 15 examiner, 1.00 grade 10 rates and forms specialist, 1.00 grade 12 paralegal, and 1.00 grade 15 data processing specialist. FY94 also includes start-up equipment and office furniture purchases.
5. 1,400 individual insurers, both domestic and foreign, will continue to file for certificates of authority and pay the accreditation fee. Fees will be set at a rate necessary to cover expenses. With 1,400 insurers, a fee of \$200 annually will be necessary. There will be a general fund loan the first year, repaid in FY95.

FISCAL IMPACT: State Auditor's Office-Insurance Program-Accreditation Unit:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Expenditures:						
FTE	0.00	6.00	6.00	0.00	6.00	6.00
Personal Services	0	229,972	229,972	0	229,972	229,972
Operating Expenses	0	39,080	39,080	0	39,080	39,080
Equipment	0	18,400	18,400	0	0	0
Total	0	287,452	287,452	0	269,052	269,052
Funding:						
State Special Revenue	0	287,452	287,452	0	269,052	269,052
Revenue:						
State Special (accreditation fees)	0	280,000	280,000	0	280,000	280,000
Net Impact on state special revenue			(7,452)			10,948

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Continued support of the accreditation program will require ongoing expenses for the State Auditor's Office. These ongoing expenses are expected to be paid for by insurers through annual accreditation fees.

Dave Lewis 3-12-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Chris Christiaens 3/4/93
CHRIS CHRISTIAENS, PRIMARY SPONSOR DATE

Fiscal Note for SB0430, as introduced

SB 430

27

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS & INDUSTRY**

Call to Order: By J.D. Lynch, Chair, on March 25, 1993, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. J.D. Lynch, Chair (D)
Sen. Chris Christiaens, Vice Chair (D)
Sen. John Brenden (R)
Sen. Betty Bruski-Maus (D)
Sen. Delwyn Gage (R)
Sen. Tom Hager (R)
Sen. Ethel Harding (R)
Sen. Ed Kennedy (D)
Sen. Terry Klampe (D)
Sen. Francis Koehnke (D)
Sen. Kenneth Mesaros (R)
Sen. Doc Rea (D)
Sen. Bill Wilson (D)

Members Excused: Senator Hager

Members Absent: None.

Staff Present: Bart Campbell, Legislative Council
Kristie Wolter, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 355, SB 354, SB 430
Executive Action: None.

HEARING ON HB 355

Opening Statement by Sponsor:

Representative Hal Harper, House District 44, stated HB 355 would require pharmacies to post top 20 drugs sold. He stated HB 355 would require the Board of Pharmacy to hold a public hearing and decide if the interests of the consumers would be furthered by the adoption of a rule which would allow them to decide which 20 drugs will be posted. He stated the drugs will only have to be posted in outpatient facilities. Representative Harper stated

Senator Gage asked Mr. O'Keefe about the clause in SB 354 which gave the Commissioner the authority to reinstate a license without the proper education requirements. Mr. O'Keefe stated the exemption of someone from the education requirements was in extreme cases only.

Senator Gage asked Mark Nelson, Administrator, Licensing Bureau, to explain the provisions on page 6, lines 9 and 10.

Senator Gage asked Mr. O'Keefe how the approval of courses is done. Mr. O'Keefe stated there would be a council which would review and approve courses for continuing education credits.

Referring to page 7, subsection 3, Senator Gage asked Mr. O'Keefe what the definition of "successful" was when referring to the completion of a course. Mr. O'Keefe stated the goal of the council is to examine the courses and approve the education level achieved by the agents. Senator Gage then asked if a course can be approved after it has been taken. Mr. O'Keefe stated the Council would not approve a course after it had been taken without prior approval.

Closing by Sponsor:

Senator Christiaens stated the title insurance people must approach the Advisory Council about having a designated place on the Board. He stated in order to be licensed, the agents must have 40 hours of education and take a pre-licensing exam.

HEARING ON SB 430

Opening Statement by Sponsor:

Senator Chris Christiaens, Senate District 18, stated SB 430 would provide for the accreditation of the Montana State Insurance Department. He stated the Department must meet certain minimum standards and regulations to be accredited. He stated the accreditation of the Insurance Department would increase their ability to prevent insurance company insolvencies. He stated SB 430 would allow the Insurance Department to achieve accreditation standards which 19 states have already reached. Senator Christiaens concluded 30 other states have scheduled accreditation review for 1993.

Proponents' Testimony:

Mark O'Keefe, State Auditor and Insurance Commissioner, stated SB 430 was the most important piece of insurance legislation reviewed during the Session. He stated SB 430 was a pro-Montana, pro-business and a pro-consumer bill. He stated the National Association of Insurance Commissioners (NAIC) has established a

set of minimum standards for the competency of all insurance departments. He stated Montana must meet the standards if they would like to retain the ability to regulate the insurance industry. He stated Montana currently does not meet these standards. Mr. O'Keefe stated SB 430 would bring the state to the minimum level of standards to retain state control of the insurance industry. He supplied the Committee with a copy of the standards and procedures the Commission would have to go through to become accredited (Exhibit #3). He stated SB 430 would allow insurance carriers in Montana to stay in the state and would allow for the promotion of business in the state. He stated SB 430 would upgrade the Insurance Department and would allow the Department to better monitor and regulate the insurance industry. He stated SB 430 is needed or Montana will be "left behind" in the insurance industry.

Frank Cote, Deputy Insurance Commissioner, stated SB 430 would pass four new NAIC acts. He stated SB 430 would allow for the Montana Insurance Department to conduct regulatory functions of insurers. He stated SB 430 would allow for staffing to handle the increase in work load. Mr. Cote stated his support of SB 430.

Robert Minto, President, CEO, Attorney's Liability Protection Society (ALPS) stated his support of SB 430. He stated SB 430 was an "opportunity" bill which would allow for outside industry to come into the state and would allow for existing companies to remain in the state. He stated any risk retention groups must be regulated by an accredited department in the states where they are located.

Jacqueline Lenmark, American Insurance Association (AIA), read from prepared testimony in support of SB 430 (Exhibit #4). She stated there were some amendments attached to her testimony which she felt should not be addressed until later.

Kendra Kawaguci, National Association of Independent Insurers, stated her support of SB 430.

Larry Akey, Montana Association of Life Underwriters, stated his support of SB 430. He supplied the Committee with a brochure which clarified the accreditation process (Exhibit #5).

Tom Hopgood, Health Insurance Agents of America, stated his support of SB 430 .

Debbie Berney, Professional Insurance Agents of Montana, stated SB 430 is necessary and stated her support.

Bill Olson, AARP, stated his support of SB 430.

Bill Jensen, General Council, Blue Cross/Blue Shield, stated his support of SB 430.

Roger McGlenn, Executive Director, Independent Insurance Agents Association of Montana, stated his support of SB 430. He stated SB 430 was necessary for the consumers.

Clyde Dailey, Executive Director, Montana Senior Citizens Association stated SB 430 is a pro-consumer bill and would protect the people from potential insolvencies.

Patrick Driscoll, American Council of Life Insurance, stated his support of SB 430.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Referring to Section 62, Senator Gage asked Mr. O'Keefe if the Association would fall under the regulation of the FDIC. Mr. O'Keefe stated the law was amended to bring it into compliance with the codes.

Senator Mesaros asked Mr. O'Keefe what the cost would be to implement the accreditation process. Mr. O'Keefe referred Senator Mesaros to the fiscal note. Mr. O'Keefe stated the fees will be supplied by the insurance companies. He stated the fees are earmarked.

Senator Brenden asked Mr. O'Keefe if their payment of the fees would result in an increase in cost to the consumers. Mr. O'Keefe stated the consumers will see an increase, but the fee is only \$200 per company doing business in the state so the increase will be insubstantial.

Senator Koehnke asked Mr. O'Keefe what would happen if the federal government gains control of the industry in the state. Mr. O'Keefe stated the companies would then have the option of being regulated through the federal government or through state regulators. He stated if they opted for federal regulation, the state would have no say in the insurance industry in Montana.

Closing by Sponsor:

Senator Christiaens stated SB 430 was necessary and was suggested by the insurance industry.

Announcement:

Senator Lynch stated a Committee letter had been drafted regarding distribution of prescription drugs in rural areas. He

SENATE BUSINESS & INDUSTRY COMMITTEE

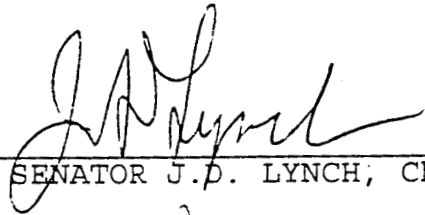
March 25, 1993

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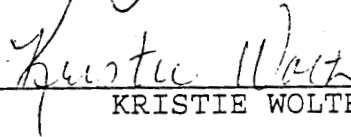
stated the letter addressed the concerns raised by Senator Bruski-Maus. He read the letter to the Committee and asked they sign it (Exhibit #6).

ADJOURNMENT

Adjournment: 11:35 a.m.



SENATOR J.D. LYNCH, Chair



KRISTIE WOLTER, Secretary

JDL/klw

FINANCIAL REGULATION
STANDARDS AND ACCREDITATION
PROGRAM
of the
NATIONAL ASSOCIATION
OF
INSURANCE COMMISSIONERS

December 15, 1992

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 3
DATE 3/25/93
BILL NO. 50130

The National Association of Insurance Commissioners is a non-profit organization of the chief insurance regulators of the fifty states, the District of Columbia, and four U.S. territories.

Washington Counsel
444 Capitol Street, N.W.
Suite 309
Washington, DC 20001-1512
(202) 624-7790
Fax (202) 624-8579

Support and Services Office
120 West 12th Street
Suite 1100
Kansas City, MO 64105-1925
(816) 842-3600
Fax (816) 471-7004

Securities Valuation Office
195 Broadway
New York, NY 10007-0007
(212) 285-0010
Fax (212) 285-0073

THE NAIC FINANCIAL REGULATION STANDARDS AND ACCREDITATION PROGRAM

Introduction

A system of effective solvency regulation has certain basic components. It requires that regulators have adequate statutory and administrative authority to regulate an insurer's corporate and financial affairs. It requires that regulators have the necessary resources to carry out that authority. Finally, it requires that insurance departments have in place organizational and personnel practices designed for effective regulation.

To guide state legislatures and state insurance departments in the development of effective solvency regulation, the NAIC began, in 1988, the process which led to the adoption of the NAIC's Financial Regulation Standards in June 1989. These standards, discussed in greater detail below, establish minimum requirements for an effective regulatory system in each state.

To provide guidance to the states regarding the minimum standards and an incentive to put them in place, the NAIC adopted in June 1990 a formal certification program. Under this plan, each state's insurance department will be reviewed by an independent review team whose job is to assess that department's compliance with the NAIC's Financial Regulation Standards. Departments meeting the NAIC Standards will be publicly acknowledged, while departments not in compliance will be given guidance by the NAIC to bring the department into compliance. Furthermore, beginning in January 1994, accredited states will not accept reports of zone examinations from unaccredited states except under limited circumstances, providing further impetus for states to adopt the minimum standards. It is likely that states will pass similar provisions to act as incentives for state insurance departments to become accredited. For example, a state may decide not to license a company domiciled in a non-accredited state.

To help states assess their compliance with the standards, the NAIC has performed a review of each state's laws and regulations addressing insurer solvency, in order to alert states to differences between the NAIC models that are a part of the Financial Regulation Standards and each state's statutes and regulations.

Nineteen states--Alaska, Colorado, Florida, Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, New Hampshire, New York, North Carolina, North Dakota, Ohio, South Carolina, Texas, Utah, Virginia and Wisconsin, have undergone the formal certification process and have been accredited as being in compliance with the Financial Regulation Standards. Additional states will be reviewed in the second half of 1992.

How The Accreditation Program Works

The NAIC Accreditation Program establishes requirements under which a state insurance department may seek initial accreditation. Additionally, the Program establishes guidelines for states already accredited to maintain that accreditation over time.

Initial Accreditation Review

1. State requests an accreditation review by contacting the Support and Services Office (SSO) of the NAIC.
2. NAIC/SSO confirms with the state that the Financial Regulation Standards Self-Evaluation Guide on file at the SSO is current and complete or requests the state to submit an updated Self-Evaluation Guide.
3. NAIC/SSO notifies the Financial Regulation Standards and Accreditation Committee (FRSAC) that the state has requested an accreditation review and provides the FRSAC with a list of qualified Review Team candidates, comprised of experts in insurance regulation with no present ties to either the industry or an insurance department.
4. FRSAC selects the Review Team and the Review Team Leader from the qualified list. The Review Team consists of three to six individuals depending on the size of the state. At least one of the Review Team members is required to be a disinterested former executive level regulator.
5. NAIC/SSO notifies the state of the Review Team selected by the FRSAC.

6. NAIC/SSO notifies the Review Team members. The Review Team members are paid by the NAIC/SSO at a set hourly rate for the time plus reasonable actual expenses incurred.
7. NAIC/SSO works with the state to schedule the site visit and notifies the Review Team of the timing. Generally, a site visit takes three to five days depending on the size of the state.
8. NAIC/SSO sends copies of the state's completed Financial Regulation Standards Self-Evaluation Guide plus any applicable supporting documentation and the NAIC/SSO staff's synopsis of the Self-Evaluation Guide and detailed review of the Laws and Regulations section, including any concerns and potential problems to each Review Team member to enable the Review Team to plan and prepare for the site visit.
9. NAIC/SSO notifies the state of the data, other information, and interview needs of the Review Team for its on-site review.
10. Review Team performs the on-site review following a general outline of procedures to be performed to allow for uniformity among the site visits at the different states. In addition, an NAIC/SSO representative is an observer on each site visit to help ensure uniformity and consistency in each on-site review. Before the on-site review, there is an initial meeting of the team members to discuss comments and concerns from review of the Financial Regulation Standards Self-Evaluation Guide and supporting documentation and the NAIC staff's synopsis of the Self-Evaluation Guide.
11. The on-site review consists of the following:
 - i. Interviews with department personnel.
 - ii. Review of laws and regulations.
 - iii. Review of prior examination reports and supporting work papers and analytical reviews.
 - iv. Inspection of regulatory files for selected companies.
 - v. Review of organizational and personnel policies.

- vi. Walk-through of the department to gain an understanding of document and communication flows.
 - vii. Meeting of the team members to discuss comments and findings from the review.
 - viii. Closing conference with the state to discuss findings.
12. As a result of the site visit, a report is prepared by the Review Team and submitted to the FRSAC by the Team Leader. The report summarizes the scope of the procedures performed during the site visit, documents the findings on an exception basis, highlights major recommendations as a result of the review, and concludes with the Review Team's opinion as to whether the Team believes that the state should be accredited by the FRSAC.
 13. FRSAC meets to discuss the Review Team's report. FRSAC also has copies of state's Financial Regulation Standards Self-Evaluation Guide and supporting documentation available. In addition, the Review Team and/or the Team Leader is present at the meeting as needed. The NAIC/SSO representative who served as an observer on the on-site review also attends the meeting.
 14. As a result of this meeting, the FRSAC makes a decision whether or not the state should be accredited. Except in unusual circumstances, the recommendation of the Review Team will be adopted by the FRSAC.
 15. FRSAC informs the state of its decision. If the decision is favorable, the state receives an accreditation award at the next scheduled NAIC national or zone meeting and a press release acknowledging the accreditation will be issued. If the decision is unfavorable, the state has three options: withdraw its request for accreditation; ask FRSAC to hold its decision in abeyance pending legislative or other corrective action to bring the state into compliance with the standards; or ask the FRSAC to reconsider the decision.
 16. If the state requests reconsideration, FRSAC meets to hear the state's appeal. As a result of this meeting, FRSAC makes a final decision regarding whether to accredit the state and inform the state of this decision.

17. Accreditation is for a five-year period, subject to annual reviews of the state's Financial Regulation Standards Self-Evaluation Guide. If information comes to the attention of FRSAC which suggests that a state may no longer meet the standards, a special review may be conducted.
18. If FRSAC concludes that the state should not be accredited, the specific reasons are documented in a report to the state.

Interim Annual Reviews

1. Annually, on the first four anniversaries of the state's accreditation, the state shall submit updated Financial Regulation Standards Self-Evaluation Guides along with a report which summarizes the changes from the prior year to the NAIC/SSO.
2. The state's report in the first interim year after accreditation shall also respond to all recommendations made in the Review Team's report which was prepared during the accreditation process.
3. NAIC/SSO will review the documentation submitted by the state and summarize for presentation to FRSAC.
4. After hearing the report from the NAIC/SSO, FRSAC will determine whether the state still complies with the Financial Regulation Standards. (FRSAC can request that a representative of the state be present to answer questions, if desired.)
5. If FRSAC finds the state to be in non-compliance with the Financial Regulation Standards, the specific reasons would be documented in a letter to the state and the accreditation would be revoked.
6. On the fifth anniversary of the state's accreditation, the state would be subject to a full accreditation review following the steps outlined for an initial accreditation review above.

A Closer Look At The Minimum Standards

The Financial Regulation Standards have been divided into three major categories: laws and regulations; regulatory practices and procedures; and organizational and personnel practices.

Laws and Regulations**1. Examination Authority**

The department should have the authority to examine companies whenever it is deemed necessary. Such authority should include complete access to the company's books and records and, if necessary, the records of any affiliated company, agent, and/or managing general agent. Such authority should extend not only to inspect books and records but also to examine officers, employees, and agents of the company under oath when deemed necessary with respect to transactions directly or indirectly related to the company under examination.

2. Capital and Surplus Requirement

The department should have the ability to require that insurers have and maintain a minimum level of capital and surplus to transact business. The department should have the authority to require additional capital and surplus based upon the type, volume and nature of insurance business transacted.

3. NAIC Accounting Practices and Procedures

The department should require that all companies reporting to the department file the appropriate NAIC annual statement blank which should be prepared in accordance with the NAIC's instructions handbook and follow those accounting procedures and practices prescribed by the NAIC's *Accounting Practices and Procedures Manual*.

4. Corrective Action

State law should contain the NAIC's Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in a Hazardous Financial Condition or a substantially similar provision that authorizes the department to order a company to take necessary corrective action or cease and desist certain practices which, if not corrected, could place the company in a hazardous financial condition.

5. Valuation of Investments

The department should require that securities owned by insurance companies be valued in accordance with those standards promulgated by the NAIC's Securities Valuation Office (SVO). Other invested assets should be required to be valued in accordance with the procedures promulgated by the NAIC's Financial Condition (EX4) Subcommittee.

6. Holding Company Systems

State law should contain the NAIC Model Holding Company Systems Act or an Act substantially similar and the department should have adopted the NAIC's model regulation relating to this law.

7. Risk Limitation

State law should prescribe the maximum net amount of risk to be retained by a property and liability company for an individual risk based upon the company's capital and surplus which should be no larger than 10% of the company's capital and surplus.

8. Investment Regulations

State statute should require a diversified investment portfolio for all domestic insurers both as to type and issue and include a requirement for liquidity.

9. Admitted Assets

State statute should describe those assets that may be admitted, authorized or allowed as assets in the statutory financial statement of insurers.

10. Liabilities and Reserves

State statute should prescribe minimum standards for the establishment of liabilities and reserves resulting from insurance contracts issued by an insurer; including, life reserves, active life reserves, and unearned premium reserves and liabilities for claims and losses unpaid and incurred but not reported claims.

11. Reinsurance Ceded

State law should contain the NAIC Model Law on Credit for Reinsurance and the Model Regulation for Life Reinsurance Agreements or substantially similar laws.

12. CPA Audits

State statute or regulation should contain a requirement for annual audits of domestic insurance companies by independent certified public accountants, such as contained in the NAIC's Model Requiring Annual Audited Financial Reports.

13. Actuarial Opinion

State statute or regulation should contain a requirement for an opinion on life and health policy and claim reserves and property and liability loss and loss adjustment expense reserves by a qualified actuary or specialist on an annual basis for all domestic insurance companies.

14. Receivership

State law should set forth a receivership scheme for the administration, by the insurance commissioner, of insurance companies found to be insolvent as set forth in the NAIC's Insurers Rehabilitation and Liquidation Model Act.

15. Guaranty Funds

State law should provide for a statutory mechanism, such as that contained in the NAIC's model acts on the subject, to ensure the payment of policyholders obligations subject to appropriate restrictions and limitations when a company is deemed insolvent.

16. Other

- i. State statute should contain a provision similar to the NAIC model act requiring domestic insurance companies to participate in the NAIC Insurance Regulatory Information System (IRIS).

- ii. State law should contain a provision similar to the NAIC's Model Risk Retention Act for the regulation of risk retention groups and purchasing groups.
- iii. State statute should contain the NAIC's Model Law for Business Transacted with Producer Controlled Property/Casualty Insurer Act or a similar provision. This Model was amended in June 1991 and will not be required for accreditation until June 1993.

17. Managing General Agents

State law should contain the NAIC Managing General Agents Act or an Act substantially similar.

18. Reinsurance Intermediaries

State law should contain the NAIC Reinsurance Intermediaries Act or an Act substantially similar.

19. Examinations

State law should contain the NAIC Model Law on Examination or an Act substantially similar.

**Regulatory Practices
and Procedures**

1. Financial Analysis

- i. Department should have a sufficient staff of financial analysts with the capacity to effectively review the financial statements as well as other information and data to discern potential and actual financial problems of domestic insurance companies.
- ii. Department should have an intra-department communication and reporting system that assures that all relevant information and data received by the department that may assist in the financial analysis process is directed to the financial analysis staff.
- iii. The internal financial analysis process should provide for levels of review and reporting.

- iv. The financial analysis procedure should be priority-based to ensure that potential problem companies are reviewed promptly. Such a prioritization scheme should utilize the NAIC's Insurance Regulatory Information System and/or a state's own system.

2. Financial Examinations

- i. The department should have the resources to examine all domestic companies on a periodic basis that is commensurate with the financial strengths and position of the insurer.
- ii. The department's examination staff should consist of a variety of specialists with training and/or experience in the following areas or otherwise have available qualified specialists that will permit the department to effectively examine any insurer: computer audit specialist, reinsurance specialist, life and health company examiners, property and liability examiners, life and health actuarial examiners, property and liability actuarial examiners, and property and liability claims examiners.
- iii. The department's procedures for examinations shall provide for supervisory review within the department of examination work papers and reports to ensure that the examination procedures and findings are appropriate and complete and that the examination was conducted in an efficient and timely manner.
- iv. The department's policy and procedures for examinations should follow those that are set forth in the NAIC's *Examiners Handbook*.
- v. In scheduling financial examinations the department should follow those procedures set forth in the NAIC's *Examiners Handbook*. The schedule should provide for the periodic examination of all domestic companies on a timely basis. This system should accord priority to companies that are having adverse financial trends or otherwise demonstrate a need for examination such as determinations of the NAIC IRIS Examiner Team.

- vi. The department's procedures require that all examination reports that contain material adverse findings be promptly presented to the Commissioner or his or her designee for a determination and implementation of appropriate regulatory action.
- vii. The department's reports of examination should be prepared in accordance with the format adopted by the NAIC and should be sent to other states in which the company transacts business in a timely fashion.

3. Other

The department should generally follow and observe the procedures set forth in the NAIC's *Troubled Insurance Company Handbook* regarding domestic insurance companies identified as troubled, including communication to other insurance departments in jurisdictions in which the carrier transacts business.

1. Professional Development

The department should have a policy that requires the professional development of staff through job-related college courses, professional programs, and/or other training programs funded by the department.

2. Organization

All financial regulation and surveillance activities are the responsibility of an individual who shall report to the Commissioner or his or her designee.

3. Evaluation of Staff

The department's staff and contractual staff involved in financial regulation and surveillance should all be periodically evaluated by the department to ensure that job duties and responsibilities are being discharged in a satisfactory manner.

Organizational and Personnel Practices

4. Minimum Educational and Experience Requirements

The department should establish minimum educational and experience requirements for all professional employees and contractual staff positions in the financial surveillance and regulation area which are commensurate with the duties and responsibilities of the position.

5. Pay Structure

The department's pay structure for those positions involved with financial surveillance and regulation should be competitively based to attract and retain qualified personnel.

6. Funding

The department's funding should be sufficient to allow for the financial surveillance and regulation staff's participation as appropriate in the meetings and training sessions of the NAIC and meetings relating to the review, coordination, and the development and implementation of action for troubled insurers.

Evolving Standards: The Impact of Changes in the Financial Regulation Standards

As insurance industry practices evolve, so must solvency regulation. In recognition of this, the NAIC has anticipated that the original Financial Regulation Standards, outlined above, would not be static, but would be changed from time to time. The Accreditation Program reflects this concept by allowing for additional minimum standards. In the event additional standards are established by the NAIC, state insurance departments seeking to acquire or retain accreditation will have two years from the date the NAIC established the new standards to implement them.

In December 1991, the NAIC adopted formal procedures to encourage input from public officials, consumers, academics and industry representatives in the process when making changes in the NAIC's Financial Regulation Standards and Accreditation Program.

The procedures identify four ways in which the solvency standards may be modified:

1. The development of new models;
2. Amendments to existing models already included in the standards;
3. Addition of more, or more specific requirements in any part of the standards; or
4. Modification of current requirements already generically included in the standards, such as modification of the annual statement blank required to be filed by all companies.

The procedures for the development of a new model that the Executive Committee foresees will be considered for incorporation into the Standards and amendments to models already included in the standards are much the same. In both cases, the Executive Committee, either upon request or of its own initiative, will note the potential impact on the standards in its charge to the panel responsible for development of the model. That panel will then notify all insurance regulators, the National Conference of State Legislatures (NCSL), National Governors Association (NGA), National Conference of Insurance Legislators (NCOIL), and others, both of the potential change in the Standards and of meeting times and places.

Once the new or amended model is received by the Executive Committee, it will be referred to the Financial Regulation Standards and Accreditation Committee (FRSAC) for a recommendation on whether the model is appropriate for inclusion in the Standards.

Should any member of the NAIC or FRSAC propose additional requirements in parts A, B, or C of the Standards, initial review of that proposal will be conducted by FRSAC, and the procedures for notice to and participation by public officials and members of the public shall be the same as for other changes in the Standards.

Additions to the Standards will be required for certification as of two years from the January 1 after adoption as a new standard by the NAIC.

Finally, the new procedures adopt similar notice and comment requirements should an NAIC panel recognize that work it is doing might have an indirect impact on the Standards.

WHAT THE FUTURE HOLDS: A STRONG SYSTEM OF SOLVENCY REGULATION

In its present state, the regulation of the insurance industry for solvency stands as a unique example of how a national regulatory system can be built with its foundation at the state - not federal level. The strength of that system resides in the interdependence of independent state regulators, each responsible to his or her own constituencies, yet jointly responsible for the financial health of an entire industry.

State insurance regulators, not content to rest on the historic success of the current regime, have devised, in the Financial Regulation Standards Accreditation Program, a powerful means of achieving the necessary degree of uniformity among states without sacrificing the multistate diversity that has been instrumental to that success. At this writing, state legislatures and insurance departments across the nation are moving at an unprecedented pace to bring their respective solvency regulation into compliance with the NAIC's standards. In fact, in 1991 alone, 42 states adopted legislative packages designed to bring their departments of insurance into compliance with the Financial Regulation Standards. Four other states and the District of Columbia considered similar packages.

This flurry of legislative and administrative activity runs counter to the prediction of some critics of the Accreditation Program, that the incentives for compliance with the Standards would prove to be inadequate to motivate legislatures and insurance departments to upgrade their solvency regulatory approach. As can be seen from this activity, the blend of peer pressure among state regulators, political support from multistate domestic insurers, the sanction imposed by the new Model Law on Examination (see discussion at page 1), and the likelihood of the future adoption of even more severe incentives, has proven to be a potent force in encouraging legislators and regulators to strive to attain the NAIC's standards.

STATEMENT OF
AMERICAN INSURANCE ASSOCIATION
BY
JACQUELINE TERRELL LENMARK
RE SB 430 NAIC Accreditation Package

Mr. Chairman and members of the committee:

My name is Jacqueline Lenmark. I am a lawyer from Helena and a lobbyist for the American Insurance Association. The American Insurance Association is a national trade association that promotes the economic, legislative, and public standing of its some 250-member property-casualty insurance companies. The Association represents its participating companies before federal and state legislatures on matters of industry concern.

As many dealing with insurance topics are well aware, the National Association of Insurance Commissioners (NAIC) has established an accreditation program for state insurance departments. The program contains numerous and detailed elements that continue to be revised, refined, and adjusted. The American Insurance Association (AIA) has been strongly supportive of stronger state solvency regulation and with very few and, usually, minor exceptions, has supported the NAIC accreditation package. For that reason, AIA strongly supports the passage of Senate Bill 430.

AIA, however, does note that there are two areas in which it would request amendment of Senate Bill 430 as an improvement of the NAIC model or a more appropriate selection of NAIC model options.

First, the NAIC's definition and treatment of "extraordinary dividends" is one area in which differences between the NAIC, AIA, NAI, and other insurance concerns exist. AIA would request amendment of Senate Bill 430 as shown in amendment No. 3 of the amendments attached as a part of this statement.

Further, with respect to sections relating to managing general agents, AIA would request amendment as shown in amendments Nos. 1 and 2 of the requested amendments attached.

1. The definition of "extraordinary dividends."

Under the NAIC model, "extraordinary dividends" require prior approval of the Commissioner of Insurance before they may be paid. The problem with prior approval of dividends is most acute for companies which are stockholder-owned like many of those that belong to the AIA.

Companies seeking to attract capital in the stock markets must be capable of paying dividends to stockholders. To the extent that insurers are precluded from doing so, they become a much less attractive investment alternative than stocks of companies such as General Motors, AT&T, or other entities that provide a predictable stream of income through dividends as well as an opportunity for appreciation in stock value. Investors often look to a stock's dividend history before making the all-important investment decision. While insurers have been subject to some dividend payment restrictions in the past, the definition of "extraordinary dividends" contained in Senate Bill 430 poses a threat of interruption to steady and predictable dividend payments by major insurers and a real risk that capital will only be attracted by insurer stocks in the marketplace at higher costs.

The amendments in Senate Bill 430 to present Montana law propose to limit dividends to 10% of surplus of the preceding calendar year and requires 30 days prior notice. AIA prefers language adopted in Washington which is NAIC approved that provides for limiting dividends to the greater of 10% of a company surplus or net gain from operations of the company (for life insurance companies) or net income for companies (for property and casualty companies) for the preceding year, maintaining the 30-day notice. The practical effect of the language is that stock insurance companies can operate in the same competitive position as virtually every other business enterprise in America. If limitations are to be applied to dividend payments, and those limitations related to solvency, any limitation should be applied only to a company that the Insurance Commissioner determines to be in a hazardous financial condition. The Washington language proposed, in the opinion of the AIA, will meet the statement of intent in Senate Bill 430. While AIA recognizes that Montana has no domestic insurers, there is interest in this by AIA member companies as part of an overall national strategy. The amendments proposed are not a major departure from current language, and will encourage the domestication of insurers in Montana.

2. Managing General Agents:

Many insurance companies rely on managing general agents (MGAs) for production and underwriting expertise in the management of all or a part of their business. The suspected culpability of a few MGAs in the demise of several insurance companies in the 1980s convinced many regulators that improved oversight of MGA activities was necessary to assure the safety of their operations. Consequently, the National Association of Insurance Commissioners (NAIC) adopted a revised Managing General Agent Model Act in October, 1989.

Again, the AIA generally supports the NAIC Model Act, incorporated as part of Senate Bill 430, and worked closely with regulators during its evolution. The wording of many of the provisions are very particular in their import. Notable in their importance to AIA members are the precise definitions of "MGA" and the exceptions to the definition. AIA supports these definitions and would oppose any effort to change them in any detrimental way.

It is in these sections, however, in which AIA would advocate one particular improvement. The AIA supports any amendment to the exclusion from the definition of "MGA" of MGA-like entities that operate within a holding company system, as requested in the amendments Nos. 1 and 2 attached. The amendment would eliminate the requirement that an MGA manage all of the operations of an insurer under common management and control.

There are instances of MGA-like entities which meet the NAIC definition of "MGA" but are actually operating divisions of regulated insurers or their holding companies. Such divisions are open to the scrutiny of regulators under the holding company act and cannot commit the abuses that led the regulators to adopt the NAIC Model Act. These MGAs typically control all the operations of an insurer or certain combinations of critical functions that have been delegated to them, and for which the insurer's own management remains accountable.

Additionally, some MGA-like entities within large insurer groups manage some insurance operations within a holding system but not others managed by the insurer itself. In such instances the insurer gives the "MGA" broad authority in certain activities but retains the actual management of certain lines of business or control of other critical functions. Again, such "MGAs" as well as the other insurer-controlled entities within the holding company system are subject to regulation under the existing state insurance holding company act.

Both kinds of MGA-like entities are typically specialized operations that focus on particular products (e.g. Medical Malpractice, Directors and Officers Liability, Excess and Umbrella Coverages). They are established as separate subsidiaries in order to create a separate identity and expertise within the subsidiary to handle specialized business. Requiring the MGA-like entity within the system to manage all the operations of an insurer, including those operated by the insurer itself, in order to exempt itself from the MGA statutory requirements is counterproductive and serves no regulator purpose. If such a subsidiary is required to manage all of a large insurer's business, then the company management must decide to:

exhibit 1
3-25-93
SB-430

(a) write more specialized business through the subsidiary even though market conditions and underwriting profitability would not otherwise suggest a more aggressive stance; or

(b) transfer authority for managing other kinds of insurance to the specialized subsidiary even though the personnel have not been trained and lack the expertise in other areas such as commercial general liability or commercial automobile insurance.

In either event, the requirement would encourage management decisions that might be different if decisions were made solely on the basis of underwriting and management judgment. The requirement that all of the operations be managed by the subsidiary, therefore, is inconsistent with the purpose of the MGA Model Act to control and properly monitor the operations of MGAs and similar entities. Clearly, an "MGA"-like entity should not lose its exemptions just because it manages less rather than more of its affiliates' operations. For these reasons, AIA advocates adoption of amendments Nos. 1 and 2 attached. See also white paper attached.

Submitted to Senate Business and Industry Committee for hearing on Senate Bill 430, Thursday, March 25, 1993, 10:00 o'clock a.m.

Jacqueline Terrell Lenmark

3-25-93

SB-430

Amendments to Senate Bill No. 430
Introduced Copy
(NAIC Accreditation)

Prepared by Jacqueline Lenmark
American Insurance Association
March 19, 1993

1. Page 5, line 8
Following: "all"
Insert: "or part of"
2. Page 5, line 10
Following: "based"
Insert: "solely"
3. Page 81
Following: line 6
Strike: subsections (2) and (3) in their entirety
Insert: "(2) For purposes of this section, an

extraordinary dividend or distribution is a dividend or distribution of cash or other property whose fair market value, together with that of other dividends or distributions made within the period of 12 consecutive months ending on the date on which the proposed dividend is scheduled for payment or distribution, exceeds the greater of:

(a) 10% of the company's surplus as regards policyholders as of the 31st day of the previous December; or

(b) the net gain from operations of the company if the company is a life insurance company, or the net income if the company is not a life insurance company, for the 12 month period ending the 31st day of the previous December, but does not include pro rata distributions of any class of the company's own securities.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is

conditional upon the commissioner's approval. The declaration confers no rights upon shareholders until:

(a) the commissioner has approved the payment of the dividend or distribution; or

(b) the commissioner has not disapproved the payment within the 30-day period referred to in (1) of this subsection."

Exhibit 4
3-25-93
SB-430

WHITE PAPER

NAIC MODEL MGA BILL/UNDERWRITING MANAGER EXCLUSION

The Model Act defines managing general agent as any person or entity that produces gross direct written premium for the insurer that exceeds 5% of surplus and either adjusts or pays claims or negotiates reinsurance. The NAIC Model Act creates an exclusion for MGA-like entities that operate within a holding company system and which perform insurance operations on behalf of an insurer under common management and control.

In creating this exclusion, the NAIC recognized that the activities of MGA-like entities that operate within a holding company system are clearly distinguishable from those performed by independent MGA's. A true MGA is a firm that represents more than one insurer with authority to make final underwriting decisions for these companies. The evil sought to be addressed is those situations where the MGA's who have final say in deciding whether to bind the company to a risk and without review by the insurer, places poor business with the insurer. This previously unregulated activity has been identified as a significant factor in many insurer insolvencies. In contrast, the MGA operating within a holding company system places all of its business with affiliated insurers, and the holding company is able to exercise control over the MGA's underwriting decisions.

The Model as adopted, creates two exclusions which contemplate these types of entities. The first exempts employees of the insurer. The second exempts underwriting managers. This second exclusion is, however, inadequate for basically two reasons. The underwriting manager exclusion requires underwriting managers to manage "all" of the insurance operations of an insurer. In many holding company systems, an insurer is not designated to one underwriting manager and more than one underwriting manager may place business with an insurer. This occurs because the insurer's management may not want to devote all of the insurer's capital to an MGA especially if the MGA underwrites specialty lines such as professional liability which are perceived as riskier. As a result, an underwriting manager may contract to manage only part of an insurer's operations. We believe that this is consistent with prudent management. However, the current language would discourage the exercise of that prudence by not extending the exemption for underwriting managers to MGA's who manage part of the insurer's business. For this reason, we are suggesting that the definition be clarified to allow an underwriting manager to manage a part of the insurance operations of the insurer.

Exhibit # 4

3-25-93

SB-430

- 2 -

A second concern with this exclusion is an apparent prohibition on the ability of a company to use the volume of premium written as a basis for compensating an underwriting manager. The volume of business written is a standard and appropriate measure of performance. Business plans are developed which set targets based on growth. It is also standard business practice to reward an employee who meets stated growth targets. Yet, the current language would completely preclude use of premium volume growth as a factor in establishing MGA compensation.

We agree that regulators should be concerned with underwriting managers whose compensation is fixed on the basis of the volume of premium written without regard to whether or not business written is good or bad and we do not seek to exclude these types of entities from the MGA regulation. We would, however, suggest that the underwriting manager exclusion be amended to preserve an insurer's ability to compensate its underwriting managers based upon their performance which is properly evaluated based on the volume as well as profitability of the business written.

100

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 5

DATE 3/25/93

BILL NO. 82-430



*Safeguards are
necessary to assure
the financial stability
of life insurance
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good times and bad.*

*The American people
have a strong belief in
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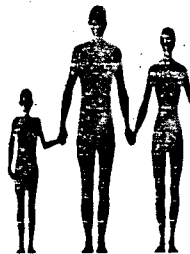
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01/93

HOW YOU
CAN HELP
MAKE YOUR
LIFE INSURANCE
EVEN SAFER



Life insurance in force in our country now exceeds the staggering amount of 10 trillion dollars — ample evidence that the American people have a strong belief in providing financial security for themselves and their families. This vast amount of life insurance also shows an implicit faith in the long-term financial integrity of the nation's life insurance companies to pay life insurance dollars when they critically needed — to make good on their contractual promises. That's why safeguards are necessary to assure the financial stability of life insurance companies through good times and bad.

State insurance regulators have the responsibility for overseeing the solvency of insurance companies. Their tools for doing this are the laws and regulations that give them the power to license those companies that are sound and, on a continuing basis, to look into the management and financial affairs of insurance companies to make sure that they are always able to pay the benefits promised by their policies.



But in the decade of the 1980's, some life insurance companies, like other business enterprises, were attracted to the high interest rates promised by investments that were more speculative than usual, including risky commercial real estate investments, and the purchase of bonds that were below investment grade quality. The result was that a number of insurance companies suffered financial impairment and some had to be taken over by state regulators.

As this occurred, the National Association of Insurance Commissioners — the central advisory body made up of all state insurance regulators — was the first to identify the problem that current state insurance laws and regulatory practices, although adequate for the past, are simply not sophisticated enough to anticipate — much less prevent — the insurance company sol-



lucy problems that can be caused by the kind of undesirable risk-taking that occurred in the past decade. The NAIC concluded that it isn't just insurance companies that need examining, but that the states themselves needed a solvency regulation checkup to bring their regulatory machinery up to par.

The NAIC made insurance company solvency its number one agenda item and created a process designed to insure that every state has the necessary insurance laws, regulations, budget, and personnel that will be essential to the proper supervision of insurance



company solvency as we approach the next century. The process is called the "NAIC Financial Regulation Standards and Accreditation Program" and here's how it works:

Each state insurance department is reviewed by an independent review team of the NAIC to assess that department's compliance with the NAIC's Financial Regulation Standards. These standards require each state to have in place certain statutes and regulations, and require the state insurance department to be adequately staffed and funded to enable it to rigorously examine the financial stability of insurance companies. States that meet these rigid standards are then "accredited" by the NAIC and are publicly acknowledged as having done so. And that's not the end of the process. Each state, once accredited, is subject to a yearly review. A full examination is required every five years to assure that each accredited state keeps current in complying with the NAIC's exacting and comprehensive standards.



Many states have already been accredited by the NAIC and many more have most of the necessary elements of accreditation already in place. What else is needed to earn accreditation is determined for each state through the NAIC accreditation review or auditing process.



You can help get your own state accredited and thereby make life insurance an even safer buy than it already is.

It's worth your effort. Households across the country now have an average of well over \$100,000 of life insurance in force. Prestigious independent firms that analyze businesses for their financial strength say that, second only to obligations of the U.S. Government, the safest place for your money is life insurance. We need to make sure that this will always be so.

The very best way to do this is through the NAIC's State Accreditation process. Help get your state accredited by contacting your state insurance department and your state legislators, urging them to take immediate action to adopt the NAIC funding and regulatory requirements that will make your life insurance even more secure than it is now.

DATE 3/25/93

SENATE COMMITTEE ON Business and Industry

BILLS BEING HEARD TODAY: HB 355, SB 354, SB 430

Name	Representing	Bill No.	Check One	
			Support	Oppose
Thyrlund	MSCA	355	✓	
TOM RYAN	MSCA - Rot To A. HRS	355	✓	
Eunice Eckhart	MSCA	355	✓	
Jennie Costly	MSCA	355	✓	
Margaret Fleming	NARFE, MSA	355	✓	
Theresa Bantel	Leg. Leg. Int.	355	✓	
Marie Cassidy	NARFE MSA	355	✓	
Tom Hopgood	Health Ins. Assoc	430	✓	
Beda Kovitt	Mt. Med. Ass	355	✓	
Dan Shea	A Citizen's Private Perspective	355	X	
Craig Young	MLIC	355	✓	
Christian Mackay	MTNS for Universal Health Care	355	✓	
David Duggan	MT Land Title Assn	HB 430 SB 354	✓	
W. Rufe	ST Auditor	354, 430	✓	
Adrienne Bernick	Professional Ins. Assn of MT	354+ 430	✓	
Sam R. Barker	MT Land Title Assn	SB 354		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3/25/93

SENATE COMMITTEE ON Business and Industry

BILLS BEING HEARD TODAY: _____

Name	Representing	Bill No.	Check One	
			Support	Oppose
Roger McHenry	IIAM	354 430	☒	☐
LARRY AXEY	MT ASSOC OF LIFE UNDERWRITERS	354 430	☒	☐
Margeline Denmark	Am. Ins. Assoc.	430	☒	☐
JOHN KINSEY	M S C A - M L I C ^{GOLD NUGGETS}	355	☒	☐
Martha B. McLee	self - M S C A - Nuggets	355	☒	☐
Elmer Fauth	MSBA CT FALLS	355	☒	☐
Groner Christal	Pres. HARFE Chp 107	355	☒	☐
Bill Olson	AARP	354 355 430	☒	☐
Robert M. Lee	INSCA	355	☒	☐
ROBERT W. MINTO, JR.	ALPS	430	☒	☐
GARY D. Kwo pp	Ins. Institute	354	☒	☐
MARK E NELSON	St Auditor / Ins Dept	354 430	☒	☒
Bill Jensen	Blue Cross Blue Shield	430	☒	☐

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By J.D. Lynch, Chair, on March 26, 1993, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. J.D. Lynch, Chair (D)
Sen. Chris Christiaens, Vice Chair (D)
Sen. John Brenden (R)
Sen. Betty Bruski-Maus (D)
Sen. Delwyn Gage (R)
Sen. Ethel Harding (R)
Sen. Ed Kennedy (D)
Sen. Terry Klampe (D)
Sen. Francis Koehnke (D)
Sen. Kenneth Mesaros (R)
Sen. Doc Rea (D)
Sen. Bill Wilson (D)

Members Excused: Senator Hager

Members Absent: None.

Staff Present: Bart Campbell, Legislative Council
Kristie Wolter, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: None.
Executive Action: SB 354, SB 430, HB 94, HB 305, HB 355,
HB 394, HB 422, HB 575, HB 619, HB 635.

EXECUTIVE ACTION ON SB 354

Motion:

Senator Bruski-Maus moved SB 345 DO PASS.

Discussion:

Senator Gage stated he had a concern with the educational classes and whether they would be approved by the Board.

Senator Klampe stated the Board would take care of the problems. He stated other regulated industries are required to offer continuing education programs and have had few problems.

Senator Gage asked if the Board would authorize correspondence courses. Senator Lynch stated they would authorize those courses.

Vote:

The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 430Motion/Vote:

Senator Kennedy moved SB 430 DO PASS. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 94Motion:

Senator Christiaens moved HB 94 BE AMENDED (681403SC.Sma). The motion CARRIED UNANIMOUSLY.

Discussion:

Senator Gage stated he would like the definition of the word "improperly". Senator Lynch stated "improper" would mean the legislator understands the impropriety and the indiscretion was noticeable.

Bart Campbell stated "improperly" is used in the section which addresses public officials. He stated the word would create a leeway for the lobbyists to state their position.

Senator Koehnke asked if there had been any problems with abuse of the system which necessitated HB 94.

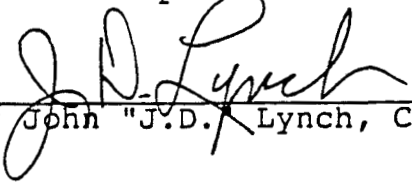
Senator Lynch stated there have been no problems, but there have been problems in other states. He said passage of HB 94 would be a show of good faith to the public that there will be no problems in Montana.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 26, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill NO. 430 (first reading copy -- white), respectfully report that Senate Bill NO. 430 do pass

Signed: 

Senator John "J.D." Lynch, Chair

COMMITTEE--HOUSE BUSINESS & ECONOMIC DEVELOPMENT

Page 11

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

SB0387	BIANCHI, DON	3/01	3/08	PROHIBIT INSURER FROM CANCELLING INSURANCE POLICY FOR NONFAULT OCCURRENCES	TABLED ON 03/08	VOTE: 10-8	
SB0390	CHRISTIAENS, CHRIS	2/23	3/04	ALLOW ACCESS TO FACILITY WITH ON-PREMISES LIQUOR LICENSE FROM SAME BUILDING	CONCUR AS AMENDED 3/5	VOTE: 18-0	3/06
SB0398	REA, JACK	2/23	3/15	REVISE LANDLORD TENANT ACTIONS	CONCUR 3/15	VOTE: 18-0	3/15
SB0411	BIANCHI, DON	2/23	3/09	REVISE REAL ESTATE ADVERTISING	CONCUR AS AMENDED 3/9	VOTE: 18-0	3/09
SB0419	LYNCH, J.D.	2/23	3/11	USE NONFILING INSURANCE IN LIEU OF RECORDING OR OTHERWISE PERFECTING TITLE	CONCUR 3/11	VOTE: 18-0	3/11
SB0420	LYNCH, J.D.	2/23	3/11	COVER JOINT DEBTORS UNDER CREDIT LIFE OR CREDIT DISABILITY JOINT POLICY	CONCUR 3/11	VOTE: 18-0	3/11
SB0430	CHRISTIAENS, CHRIS	3/31	4/06	GENERALLY REVISE INSURANCE LAWS	CONCUR AS AMENDED 4/6	VOTE: 15-3	4/08
SJ0016	JACOBSON, JUDY	2/23	3/16	URGE BD OF REGENTS TO REQUIRE CREDIT CARD APPLICATION DISCLOSURE ON CAMPUS	CONCUR 3/16	VOTE: 18-0	3/16
SJ0020	YELLOWTAIL, BILL	2/23	3/16	JOINT RESOLUTION URGING CONGRESS TO RESIST FINAL APPROVAL OF NAFTA	CONCUR AS AMENDED 3/16	VOTE: 13-5	3/17
SJ0031	HALLIGAN, MIKE	4/16	4/19	STUDY TORT REFORM	CONCUR 4/19	VOTE: 13-5	4/19

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By CHAIRMAN STEVE BENEDICT, on April 6, 1993, at
10:00 A.M.

ROLL CALL

Members Present:

Rep. Steve Benedict, Chairman (R)
Rep. Sonny Hanson, Vice Chairman (R)
Rep. Bob Bachini (D)
Rep. Joe Barnett (R)
Rep. Ray Brandewie (R)
Rep. Vicki Cocchiarella (D)
Rep. Fritz Daily (D)
Rep. Tim Dowell (D)
Rep. Alvin Ellis (R)
Rep. Stella Jean Hansen (D)
Rep. Jack Herron (R)
Rep. Dick Knox (R)
Rep. Don Larson (D)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Bruce Simon (R)
Rep. Carley Tuss (R)
Rep. Doug Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Claudia Johnson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 354 and SB 430
Executive Action: SB 373 and SB 430, SB 354

HEARING ON SB 354

Opening Statement by Sponsor:

SEN. B.F. CHRIS CHRISTIAENS, Senate District 18, Great Falls,
said SB 354 is a continuing education bill for the insurers

benefits that a car dealership really depends on. He felt if this bill isn't taken care of in this legislative session, the credit unions, bankers, car dealers, and the insurance commissioner will need to meet to decide if this is insurance, and whether or not it is being sold. He said upon passage of SB 354, there will be 12,000 agents and consultants that will come under the coverage of this bill. The number of hours for continuing education are 10 hours for life and health, 10 hours for property and casualty surety or title insurance, and 15 hours maximum for multi-line licenses. The fees will be paid by the producers and course providers. He said insurance is confusing for the public and SB 354 is for consumer protection.

HEARING ON SB 430

Opening Statement by Sponsor:

SEN. B.F. CHRIS CHRISTIAENS, Senate District 18, Great Falls, said SB 430 is an accreditation bill for the Montana Insurance Department for proof of insurance. He said in order for Montana to receive accreditation, the department must meet certain minimum standards and regulations. By doing this Montana will have the increased ability to prevent insolvencies of insurance companies. Liquidation of insurers can be costly to the state, thus the reason for this prevention measure before it begins. SEN. CHRISTIAENS gave an example how the accreditation works. In 1987, a life insurance company in Bozeman was found to be insolvent, and was approximately \$30 million in the red. About \$20 million of this cost will be borne by the general fund of the state of Montana. He said having an insurance department that is properly equipped to regulate the industry has a real dollar consequence for the state of Montana. The nationwide accreditation program currently has 19 states accredited. Thirty-one states have scheduled for accreditation review for 1993, and Montana will be one of the last few states reviewed this year assuming passage of SB 430. He listed the states that are accredited at this time; North Dakota, Utah, Colorado and Alaska. He said the program is non-structured so not just the rich states can achieve accreditation. It does require a commitment from each state in three areas: 1) the passage of a minimum set of laws providing for proper regulation of the insurance industry; 2) the establishment by the insurance department of sound examination procedures and sufficient financial analysis of domestic companies; and 3) adequate resources within the insurance department to enable them to carry out their statutory responsibilities. When SB 430 was heard in the Senate, it was supported by the entire insurance industry who want the insurance accreditation and are willing to pay the fee to bring Montana up to national standards.

Proponents' Testimony:

Mark O'Keefe, State Auditors Office, Insurance Commissioner, said SB 430 will bring Montana up to minimum standards on how to deal with insurance companies and regulate them in the state. This bill is a pro-Montana bill, pro-business bill, and a pro-consumer bill. The National Accreditation Program as set by the commissioners across the nation was done for the regulation of insurance which is a state's rights issue, an issue where individual states and provinces across the country regulate how insurance works in each state. He said REP. DINGLE of Michigan does not want the states to have any authority, so Congress is looking at national regulation to take over the regulation of insurance from the states. He quoted a Representative in Congress who said, "If you loved what they did with the savings and loan industry, you'll love what they want to do with insurance". He said the state needs to maintain control of the industry by: 1) regulation; 2) how they operate; and 3) why they operate. As a pro-business bill, there are small businesses in Montana that are called "boutique insurance companies". He gave an example of an insurance company in Missoula called AALs of Missoula which has a payroll of \$½ million to \$¾ million, and operates out of the Florence Hotel, and sells insurance in 14 to 19 states. They are a clean renewable industry, and important to the community. If this bill is not enacted into law, this company will be forced to leave Montana. When Vermont passed its accreditation, 22 companies moved into the state to open insurance companies. As a consumer bill, Montana is 47th in total funding in insurance regulations nationwide. This bill will bring Montana's standards up to 43rd in the nation for funding in the insurance department. He said the Advisory Council on Intergovernmental Relations which is an independent bipartisan commission which represents federal, state and local government, has endorsed state accreditation and concluded that any moves to impose any federal regulations are premature. He said the auditor's office took this model legislation from New Hampshire and re-wrote the laws to fit Montana. He distributed a Financial Regulation Standards and Accreditation Program by the National Association of Insurance Commissioner (NAIC). He said the bill is actually three parts: 1) for statutory authority; 2) as insurance commissioner, he needs the rules to be adopted to say, how, where, and why, to meet the bill's standards; and 3) the accreditation commissioners from the other states will come to Montana to see if the state is good enough to meet minimum accreditation standards. He said 19 states have been accredited at this time, and 2 states have lost their accreditation this past year because they did not enforce the regulations passed by the commissioners. He said this is an ongoing process that will be with Montana for a long time to be able to reach and meet the accreditation standards. If this bill does not pass, in the beginning of 1994 the companies that are domiciled in Montana will have to jump through hoops in order to be accredited, because they will be forced to meet the regulations in every state. He said if SB 430 is passed, the agents will only have to

meet the standards required in Montana. The other states that are accredited will write to Montana to let them know what they have to do for insurance regulation, it is not done by the federal government. He said 48 states are scheduled for the accreditation review, and Montana is 1 of 2 states which hasn't adopted the accreditation program. EXHIBIT 3

Frank Cote, Deputy Commissioner, State Auditors Office, distributed amendments prepared by the auditor's office. He said they are consensus amendments between the commissioner and the insurance industry. EXHIBIT 5

Debbie Berney, Professional Insurance Agents of Montana, said this bill is necessary to assure quality regulation in Montana and strongly urged the committee's support for SB 430.

Jackie Lenmark, American Insurance Association (AIA), said the AIA supports the passage of SB 430. It will make a big difference in bringing insurance companies into Montana. Ms. Lenmark distributed written testimony and a set of amendments. EXHIBIT 6 & 7

Kendra Galguchi, National Association of Independent Insurers (NAII), said they support the passage of SB 430 and the amendments by Jacqueline Lenmark. She urged the committee to include in the bill from Ms. Lenmark's amendment the language to include dividends and distribution.

Roger McGlenn, Executive Director, Independent Insurance Association of Montana, said for the previous reasons heard, they feel SB 430 is beneficial and necessary for the consumers and the industry.

Larry Akey, Montana Association of Life Underwriters, stated his support for SB 430.

Tom Hopgood, Health Insurance Association of America, said they support SB 430. He distributed information on NAIC. EXHIBIT 8

Patrick Driscoll, representing the American Council of Life Insurance, said he commends the insurance commissioner and his staff for the dedication and time they put into this effort. He said they support the amendment proposed by Ms. Lenmark if it didn't have any effect on the accreditation.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. COCCHIARELLA asked Jacqueline Lenmark if her amendments were proposed in the Senate hearing? Ms. Lenmark said by an agreement with the auditor's office they were not. She discussed the

amendments with the auditor's office and it was agreed by a consensus to wait until the hearing in the House. The exact statement and amendments were put into the record in the Senate.

REP. COCCHIARELLA asked Frank Cote what his position is on the #3 amendment from Ms. Lenmark? Mr. Cote said there were eight model regulations that the NAIC offered for extraordinary dividends. He said it is the auditor's opinion there are some that are very strict, and some are a weaker form of regulation. Mr. Cote said Montana's model is based on the New Hampshire model because the auditor's office felt it is in the middle of the eight models they examined. They felt if Ms. Lenmark's amendment was accepted the accreditation would drop from the 4 or 5 level to the 1 or 2 level which is on the weaker side.

Closing by Sponsor:

SEN. CHRISTIAENS said SB 430 is necessary to keep the federal government out the insurance regulation in Montana. The amendments are the accomplishment of the commissioner's office and the insurance industry. He said passage of this bill will attract additional companies to Montana. He urged SB 430 be concurred in.

EXECUTIVE ACTION ON SB 430

Motion: REP. STELLA JEAN HANSEN MOVED SB 430 BE CONCURRED IN.

Discussion: None

Motion/Vote: REP. STELLA JEAN HANSEN made the motion to adopt the state auditor's amendments. REP. BACHINI called the question. Voice vote was taken. Motion carried unanimously.
EXHIBIT 5

Motion/Vote: REP. SONNY HANSON made the motion to adopt Jacqueline Lenmark's amendment #3. REP. BACHINI called the question. Roll call vote was taken. Motion failed 9 - 9.
EXHIBIT 9

Motion/Vote: REP. SIMON made the motion to adopt an amendment on page 76, line 12, following "regulatory duties", insert "required to meet the minimum financial regulatory standards established by the National Association of Insurance Commissioners". EXHIBIT 2

Discussion: REP. BACHINI asked Mark O'Keefe for his views on the amendment by REP. SIMON? Mr. O'Keefe said they were going in the right direction, but would like for the language to say "the duties required to meet the provisions of this act, in that the NAIC accreditation standards are revolving", so if someone later authorizes money to be spent they hadn't thought of until later on.

HOUSE BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

April 6, 1993

Page 11 of 12

REP. BRANDEWIE called the question. Voice vote was taken. Motion carried 16 - 2 with REPS. LARSON and COCCHIARELLA voting no.

REP. BACHINI MOVED SB 430 BE CONCURRED IN AS AMENDED. REP. BRANDEWIE called the question. Voice vote was taken. Motion carried 15 - 3 with REPS. BARNETT, WAGNER AND ELLIS voting no.

Vote: SB 430 BE CONCURRED IN AS AMENDED. Motion carried 15 - 3. EXHIBIT 11

EXECUTIVE ACTION ON SB 373

Motion: REP. BRANDEWIE MOVED TO RECONSIDER ACTION ON SB 373 AND TAKE FROM THE TABLE.

Discussion: SEN. BECK said SB 373 is a cleanup bill for the Department of Justice. He said in the last session, the legislature allowed for the titling of snowmachines. SB 373 will coincide with that bill from last session to allow the banks to process the liens in the proper order, and raise the fees from \$4 to \$5.

Peter Funk, Assistant Attorney General, distributed a fact sheet prepared by the Department of Justice which shows the elimination of inconsistencies in the motor vehicle code involving the processing of liens and titles and the department's regulatory functions over motor vehicle dealers and mobile home dealers. EXHIBIT 10

Motion/Vote: REP. BRANDEWIE MOVED SB 373 BE CONCURRED IN. Voice vote was taken. Motion carried unanimously.

Vote: SB 373 BE CONCURRED IN. Motion carried 18 - 0.

EXECUTIVE ACTION ON SB 354

Motion: REP. BACHINI MOVED SB 354 BE CONCURRED IN.

Discussion: REP. BRANDEWIE moved to adopt an amendment. Voice vote was taken. Motion carried 15 - 3 with REPS. DOWELL, TUSS AND STELLA JEAN HANSEN voting no. John Cadby's amendment. EXHIBIT 1

REP. SIMON moved to adopt an amendment on page 11, line 14, and page 14, line 18. REP. BRANDEWIE called the question. Voice vote was taken. Motion carried unanimously.

REP. BRANDEWIE moved to adopt an amendment to insert an coordinating clause. Susan Fox, Legislative Counsel, said the

HOUSE OF REPRESENTATIVES
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ROLL CALL

DATE 4-6-93

NAME	PRESENT	ABSENT	EXCUSED
REP. ALVIN ELLIS	✓		
REP. DICK KNOX	✓		
REP. NORM MILLS	✓		
REP. JOE BARNETT	✓		
REP. RAY BRANDEWIE	✓		
REP. JACK HERRON	✓		
REP. TIM DOWELL	✓		
REP. CARLEY TUSS	✓		
REP. STELLA JEAN HANSEN	✓		
REP. BOB PAVLOVICH	✓		
REP. VICKI COCCHIARELLA	✓		
REP. FRITZ DAILY	✓		
REP. BOB BACHINI	✓		
REP. DON LARSON	✓		
REP. BRUCE SIMON	✓		
REP. DOUG WAGNER	✓		
REP. SONNY HANSON, VICE CHAIRMAN	✓		
REP. STEVE BENEDICT, CHAIRMAN	✓		

HR:1993
wp.rollcall.man

EXHIBIT 3
DATE 4-6-93
SB 354

FINANCIAL REGULATION
STANDARDS AND ACCREDITATION
PROGRAM
of the
NATIONAL ASSOCIATION
OF
INSURANCE COMMISSIONERS

December 15, 1992

This document is stored at the Historical Society at 225 North
Roberts Street, Helena, MT 59620-1201. The phone number is
444-2694.

Exhibit 4 is for SB 354

Amendments to Senate Bill No. 430
Prepared by the State Auditor's Office
April 5, 1993

1. Page 5, line 8
Following: "all"
Insert: "or part of"
2. Page 5, line 10
Following: "based"
Insert: "solely"
3. Page 71, line 6
Following: "...commissioner."
Insert: "The statement must be completed in accordance with the annual statement instructions and the accounting practices and procedures manual of the national association of insurance commissioners. The statement must be accompanied by an actuarial opinion attesting to the adequacy of the insurer's reserves."
4. Page 103, line 6
Following: "~~shall~~"
Replace: "may" with "does"
5. Section 33-10-227, MCA, is amended to read:

"33-10-227. Assessments--abatement--basis for ratesetting.

(1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors ~~shall~~ must assess the member insurers, separately for each account, at such times and for ~~such~~ the amounts as the board finds necessary. The board ~~shall~~ must collect the assessments after 30 days' written notice to the member insurers before payment is due.

(2) There ~~shall~~ must be two classes of assessments, as follows:

(a) Class A assessments ~~shall~~ must be made for the purpose of meeting administrative costs and other general expenses not related to particular impaired insurer.

(b) Class B assessments ~~shall~~ must be made to the extent necessary to carry out the powers and duties of the association under 33-10-219 and 33-10-220(1) with regard to an impaired insurer.

(3) (a) The amount of any Class A assessment for each account ~~shall~~ must be determined by the board. The amount of any Class B assessment ~~shall~~ must be divided among the accounts in the proportion that the premiums received by the impaired insurer on the policies covered by each account bear to the premiums received by ~~such~~ the insurer on all covered policies.

(b) Class B assessments against member insurers for each account ~~shall~~ must be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account bear to ~~such the~~ premiums received on business in this state by all assessed member insurers.

(c) Assessments for funds to meet the requirements of the association with respect to an impaired insurer ~~shall~~ must not be made until necessary to implement the purposes of this part. Classification of assessments under subsection (2) and computation of assessments under this subsection ~~shall~~ must be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account ~~shall~~ must not in any one calendar year exceed 2% of ~~such the~~ insurer's premiums in this state on the policies covered by the account.

(5) In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in subsection (4), the amount by which ~~such the~~ assessment is abated or deferred ~~shall~~ must be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in either account, does not provide in any year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds ~~shall~~ must be assessed as soon thereafter as permitted by this part.

(6) If a one percent assessment for any subaccount of the life and annuity account in any one year does not provide an amount sufficient to carry out the responsibilities of the association, then pursuant to subsection (3)(b), the board must access all subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in subsection (4) above.

~~(6)~~ (7) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

~~(7)~~ (8) It ~~shall be~~ is proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this part, to consider the amount reasonably necessary to meet its assessment obligations under this part.

~~(8)~~ (9) The association ~~shall~~ must issue to each insurer paying an assessment under this part a certificate of contribution, in a form prescribed by the commissioner, for the amount so paid. All outstanding certificates ~~shall~~ be are of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in ~~such~~ the form and for ~~such~~ the amount, if any, and period of time as the commissioner may approve.

EXHIBIT 5
DATE 4-6-93
52420

STATEMENT OF
AMERICAN INSURANCE ASSOCIATION
BY
JACQUELINE TERRELL LENMARK
RE SB 430 NAIC Accreditation Package

Mr. Chairman and members of the committee:

My name is Jacqueline Lenmark. I am a lawyer from Helena and a lobbyist for the American Insurance Association. The American Insurance Association is a national trade association that promotes the economic, legislative, and public standing of its some 250-member property-casualty insurance companies. The Association represents its participating companies before federal and state legislatures on matters of industry concern.

As many dealing with insurance topics are well aware, the National Association of Insurance Commissioners (NAIC) has established an accreditation program for state insurance departments. The program contains numerous and detailed elements that continue to be revised, refined, and adjusted. The American Insurance Association (AIA) has been strongly supportive of stronger state solvency regulation and with very few and, usually, minor exceptions, has supported the NAIC accreditation package. For that reason, AIA strongly supports the passage of Senate Bill 430.

AIA, however, does note that there are two areas in which it would request amendment of Senate Bill 430 as an improvement of the NAIC model or a more appropriate selection of NAIC model options.

First, the NAIC's definition and treatment of "extraordinary dividends" is one area in which differences between the NAIC, AIA, NAI, and other insurance concerns exist. AIA would request amendment of Senate Bill 430 as shown in amendment No. 3 of the amendments attached as a part of this statement.

Further, with respect to sections relating to managing general agents, AIA would request amendment as shown in amendments Nos. 1 and 2 of the requested amendments attached.

1. The definition of "extraordinary dividends."

Under the NAIC model, "extraordinary dividends" require prior approval of the Commissioner of Insurance before they may be paid. The problem with prior approval of dividends is most acute for companies which are stockholder-owned like many of those that belong to the AIA.

Companies seeking to attract capital in the stock markets must be capable of paying dividends to stockholders. To the extent that insurers are precluded from doing so, they become a much less attractive investment alternative than stocks of companies such as General Motors, AT&T, or other entities that provide a predictable stream of income through dividends as well as an opportunity for appreciation in stock value. Investors often look to a stock's dividend history before making the all-important investment decision. While insurers have been subject to some dividend payment restrictions in the past, the definition of "extraordinary dividends" contained in Senate Bill 430 poses a threat of interruption to steady and predictable dividend payments by major insurers and a real risk that capital will only be attracted by insurer stocks in the marketplace at higher costs.

The amendments in Senate Bill 430 to present Montana law propose to limit dividends to 10% of surplus of the preceding calendar year and requires 30 days prior notice. AIA prefers language adopted in Washington which is NAIC approved that provides for limiting dividends to the greater of 10% of a company surplus or net gain from operations of the company (for life insurance companies) or net income for companies (for property and casualty companies) for the preceding year, maintaining the 30-day notice. The practical effect of the language is that stock insurance companies can operate in the same competitive position as virtually every other business enterprise in America. If limitations are to be applied to dividend payments, and those limitations related to solvency, any limitation should be applied only to a company that the Insurance Commissioner determines to be in a hazardous financial condition. The Washington language proposed, in the opinion of the AIA, will meet the statement of intent in Senate Bill 430. While AIA recognizes that Montana has no domestic insurers, there is interest in this by AIA member companies as part of an overall national strategy. The amendments proposed are not a major departure from current language, and will encourage the domestication of insurers in Montana.

2. Managing General Agents:

Many insurance companies rely on managing general agents (MGAs) for production and underwriting expertise in the management of all or a part of their business. The suspected culpability of a few MGAs in the demise of several insurance companies in the 1980s convinced many regulators that improved oversight of MGA activities was necessary to assure the safety of their operations. Consequently, the National Association of Insurance Commissioners (NAIC) adopted a revised Managing General Agent Model Act in October, 1989.

Again, the AIA generally supports the NAIC Model Act, incorporated as part of Senate Bill 430, and worked closely with regulators during its evolution. The wording of many of the provisions are very particular in their import. Notable in their importance to AIA members are the precise definitions of "MGA" and the exceptions to the definition. AIA supports these definitions and would oppose any effort to change them in any detrimental way.

It is in these sections, however, in which AIA would advocate one particular improvement. The AIA supports any amendment to the exclusion from the definition of "MGA" of MGA-like entities that operate within a holding company system, as requested in the amendments Nos. 1 and 2 attached. The amendment would eliminate the requirement that an MGA manage all of the operations of an insurer under common management and control.

There are instances of MGA-like entities which meet the NAIC definition of "MGA" but are actually operating divisions of regulated insurers or their holding companies. Such divisions are open to the scrutiny of regulators under the holding company act and cannot commit the abuses that led the regulators to adopt the NAIC Model Act. These MGAs typically control all the operations of an insurer or certain combinations of critical functions that have been delegated to them, and for which the insurer's own management remains accountable.

Additionally, some MGA-like entities within large insurer groups manage some insurance operations within a holding system but not others managed by the insurer itself. In such instances the insurer gives the "MGA" broad authority in certain activities but retains the actual management of certain lines of business or control of other critical functions. Again, such "MGAs" as well as the other insurer-controlled entities within the holding company system are subject to regulation under the existing state insurance holding company act.

Both kinds of MGA-like entities are typically specialized operations that focus on particular products (e.g. Medical Malpractice, Directors and Officers Liability, Excess and Umbrella Coverages). They are established as separate subsidiaries in order to create a separate identity and expertise within the subsidiary to handle specialized business. Requiring the MGA-like entity within the system to manage all the operations of an insurer, including those operated by the insurer itself, in order to exempt itself from the MGA statutory requirements is counterproductive and serves no regulator purpose. If such a subsidiary is required to manage all of a large insurer's business, then the company management must decide to:

(a) write more specialized business through the subsidiary even though market conditions and underwriting profitability would not otherwise suggest a more aggressive stance; or

(b) transfer authority for managing other kinds of insurance to the specialized subsidiary even though the personnel have not been trained and lack the expertise in other areas such as commercial general liability or commercial automobile insurance.

In either event, the requirement would encourage management decisions that might be different if decisions were made solely on the basis of underwriting and management judgment. The requirement that all of the operations be managed by the subsidiary, therefore, is inconsistent with the purpose of the MGA Model Act to control and properly monitor the operations of MGAs and similar entities. Clearly, an "MGA"-like entity should not lose its exemptions just because it manages less rather than more of its affiliates' operations. For these reasons, AIA advocates adoption of amendments Nos. 1 and 2 attached. See also white paper attached.

Submitted to House Business and Economic Development Committee on Senate Bill 430, Tuesday, April 6, 1993, 9:00 o'clock a.m.

Jacqueline Terrell Lenmark

EXHIBIT 7
DATE 4-6-93
SB 430

Amendments to Senate Bill No. 430
Third Reading Copy
(NAIC Accreditation)

Prepared by Jacqueline Lenmark
American Insurance Association
April 5, 1993

1. Page 5, line 8
Following: "all"
Insert: "or part of"
2. Page 5, line 10
Following: "based"
Insert: "solely"
3. Page 81
Following: line 6
Strike: subsections (2) and (3) in their entirety
Insert: "(2) For purposes of this section, an

extraordinary dividend or distribution is a dividend or distribution of cash or other property whose fair market value, together with that of other dividends or distributions made within the period of 12 consecutive months ending on the date on which the proposed dividend is scheduled for payment or distribution, exceeds the greater of:

(a) 10% of the company's surplus as regards policyholders as of the 31st day of the previous December; or

(b) the net gain from operations of the company if the company is a life insurance company, or the net income if the company is not a life insurance company, for the 12 month period ending the 31st day of the previous December, but does not include pro rata distributions of any class of the company's own securities.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is

conditional upon the commissioner's approval. The declaration confers no rights upon shareholders until:

(a) the commissioner has approved the payment of the dividend or distribution; or

(b) the commissioner has not disapproved the payment within the 30-day period referred to in (1) of this subsection."

Life insurance in force in our country now exceeds the staggering amount of 10 trillion dollars — ample evidence that the American people have a strong belief in providing financial security for themselves and their families. This vast amount of life insurance also shows an implicit faith in the long-term financial ability of the nation's life insurance companies to pay life insurance dollars when they are critically needed — to make good on their contractual promises.



That's why safeguards are necessary to assure the financial stability of life insurance companies through good times and bad.

State insurance regulators have the responsibility for overseeing the solvency of insurance companies. Their tools for doing this are the laws and regulations that give them the power to license only those companies that are sound and, on a continuing basis, to look into the management and financial affairs of insurance companies to make sure that they are always able to pay the benefits promised in their policies.



But in the decade of the 1980's, some life insurance companies, like other business enterprises, were attracted to the high interest rates promised by investments that were more specu-

lative than usual, including risky commercial real estate investments, and the purchase of bonds that were below investment grade quality. The result was that a number of insurance companies suffered financial impairment and some had to be taken over by state regulators.

As this occurred, the National Association of Insurance Commissioners — the central advisory body made up of all state insurance regulators — was the first to identify the problem that current state insurance laws and regulatory practices, although adequate for the past, are simply not sophisticated enough to anticipate — much less prevent — the insurance company sol-



veny problems that can be caused by the kind of undesirable risk-taking that occurred in the past decade. The NAIC concluded that it isn't just insurance companies that need examining, but that the states themselves needed a solvency regulation checkup to bring their regulatory machinery up to par.

The NAIC made insurance company solvency its number one agenda item and created a process designed to insure that every state has the necessary insurance laws, regulations, budget, and personnel that will be essential to the proper supervision of insurance

company solvency as we approach the next century. The process is called the "NAIC Financial Regulation Standards and Accreditation Program" and here's how it works:



Each state insurance department is reviewed by an independent review team of the NAIC to assess that department's compliance with the NAIC's Financial Regulation Standards. These standards require each state to have in place certain statutes and regulations, and require the state insurance department to be adequately staffed and funded to enable it to rigorously examine the financial stability of insurance companies. States that meet these rigid standards are then "accredited" by the NAIC and are publicly acknowledged as having done so. And that's not the end of the process. Each state, once accredited, is subject to a yearly review. A full examination is required every five years to assure that each accredited state keeps current in complying with the NAIC's exacting and comprehensive standards.



Many states have already been accredited by the NAIC and many more have most of the necessary elements of accreditation already in place. What else

is needed to earn accreditation is determined for each state through the NAIC accreditation review or auditing process.



You can help get your own state accredited and thereby make life insurance an even safer buy than it already is.

It's worth your effort. Households across the country now have an average of well over \$100,000 of life insurance in force. Prestigious independent firms that analyze businesses for their financial strength say that, second only to obligations of the U.S. Government, the safest place for your money is life insurance. We need to make sure that this will always be so.

The very best way to do this is through the NAIC's State Accreditation process. Help get your state accredited by contacting your state insurance department and your state legislators, urging them to take immediate action to adopt the NAIC funding and regulatory requirements that will make your life insurance even more secure than it is now.

EXHIBIT 9
DATE 4-6-93
SB 430

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE
ROLL CALL VOTE

DATE 4-6-93 BILL NO. SB 430 NUMBER _____

MOTION: Rep. Sonny Hanson Moved to
adopt Jacqueline Senneker's Amendment.
Exhibit 7 Motion Failed 9-9

NAME	AYE	NO
REP. ALVIN ELLIS	✓	
REP. DICK KNOX	✓	
REP. NORM MILLS	✓	
REP. JOE BARNETT	✓	
REP. RAY BRANDEWIE	✓	
REP. JACK HERRON		✓
REP. TIM DOWELL		✓
REP. CARLEY TUSS		✓
REP. STELLA JEAN HANSEN		✓
REP. BOB PAVLOVICH		✓
REP. VICKI COCCHIARELLA		✓
REP. FRITZ DAILY		✓
REP. BOB BACHINI		✓
REP. DON LARSON		✓
REP. BRUCE SIMON	✓	
REP. DOUG WAGNER	✓	
REP. SONNY HANSON, VICE CHAIRMAN	✓	
REP. STEVE BENEDICT, CHAIRMAN	✓	
	9	9

HR:1993
wp:rlclvote.man
CS-11

Exhibit 10 is for SB 373

EXHIBIT 11
DATE 4-6-93
SB 430

Amendments to Senate Bill No. 430
Third Reading Copy

For the Committee on Business and Economic Development

Prepared by Susan B. Fox
April 7, 1993

1. Title, line 20.
Following: "33-10-224,"
Insert: "33-10-227, 33-10-230,"
2. Page 5, line 8.
Following: "all"
Insert: "or part of"
3. Page 5, line 10.
Following: "based"
Insert: "solely"
4. Page 71, line 6.
Following: "commissioner."
Insert: "The statement must be completed in accordance with the annual statement instructions and the accounting practices and procedures manual of the national association of insurance commissioners. The statement must be accompanied by an actuarial opinion attesting to the adequacy of the insurer's reserves."
5. Page 76, lines 11 and 12.
Strike: "its" on line 11
Insert: "the"
Following: "duties" on line 12
Insert: "that are required to meet the minimum financial regulatory standards established by the national association of insurance commissioners"
6. Page 103, line 6.
Strike: "may"
Insert: "does"
7. Page 127, line 20.
Following: line 19
Insert: "Section 69. Section 33-10-227, MCA, is amended to read:
"33-10-227. Assessments -- abatement -- basis for ratesetting. (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at ~~such~~ the times and for ~~such~~ the amounts as the board finds necessary. The board shall collect the assessments after 30 days' written notice to the member insurers before payment is due.
(2) There ~~shall be~~ are two classes of assessments, as follows:
(a) Class A assessments ~~shall~~ must be made for the purpose

of meeting administrative costs and other general expenses not related to a particular impaired insurer.

(b) Class B assessments ~~shall~~ must be made to the extent necessary to carry out the powers and duties of the association under 33-10-219 and 33-10-220(1) with regard to an impaired insurer.

(3) (a) The amount of any Class A assessment for each account ~~shall~~ must be determined by the board. The amount of any Class B assessment ~~shall~~ must be divided among the accounts in the proportion that the premiums received by the impaired insurer on the policies covered by each account bear to the premiums received by ~~such~~ the insurer on all covered policies.

(b) Class B assessments against member insurers for each account ~~shall~~ must be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account bear to ~~such~~ the premiums received on business in this state by all assessed member insurers.

(c) Assessments for funds to meet the requirements of the association with respect to an impaired insurer ~~shall~~ may not be made until necessary to implement the purposes of this part. Classification of assessments under subsection (2) and computation of assessments under this subsection ~~shall~~ must be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account ~~shall~~ may not in any one calendar year exceed 2% of ~~such~~ the insurer's premiums in this state on the policies covered by the account.

(5) In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in subsection (4), the amount by which ~~such~~ the assessment is abated or deferred ~~shall~~ must be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in either account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds ~~shall~~ must be assessed as soon thereafter as permitted by this part.

(6) If a 1% assessment for any subaccount of the life insurance account and the annuity account in any 1 year does not provide an amount sufficient to carry out the responsibilities of the association, then pursuant to subsection (3)(b), the board shall assess all subaccounts of the life insurance account and the annuity account for the necessary additional amount, subject to the maximum assessment stated in subsection (4).

~~(6)~~ (7) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount

the board finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

~~(7)~~(8) It ~~shall be~~ is proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this part, to consider the amount reasonably necessary to meet its assessment obligations under this part.

~~(8)~~(9) The association shall issue to each insurer paying an assessment under this part a certificate of contribution, in a form prescribed by the commissioner, for the amount ~~so~~ paid. All outstanding certificates ~~shall~~ must be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in ~~such~~ that form and for ~~such~~ the amount, if any, and period of time as that the commissioner may approve."

Section 70. Section 33-10-230, MCA, is amended to read:

"33-10-230. Tax -- writeoffs of certificates of contribution. (1) Unless a longer period has been allowed by the commissioner, a member insurer shall at its option have the right to show a certificate of contribution for a Class B assessment only as an asset in the form approved by the commissioner pursuant to 33-10-227~~(8)~~(9), at percentages of the original face amount approved by the commissioner, for calendar years as follows:

- (a) 100% for calendar year of issuance;
- (b) 80% for the first calendar year after year of issuance;
- (c) 60% for second calendar year after year of issuance;
- (d) 40% for third calendar year after year of issuance;
- (e) 20% for fourth calendar year after year of issuance.

(2) The insurer may offset the amount written off by it in the calendar year under subsection (1) above against its premium tax liability to this state accrued with respect to business transacted in ~~such~~ the calendar year.

(3) Any sums acquired by refund, pursuant to 33-10-227~~(6)~~(7), from the association which have therefore been written off by contributing insurers and offset against premium taxes as provided in subsection (2) above and are not then needed for purposes of this part ~~shall~~ must be paid by the association to the commissioner and ~~by him~~ deposited by the commissioner with the state treasurer for credit to the general fund of this state.""

Renumber: subsequent sections.

ENCL 10
4-6-93
SS 373

ROLL CALL

SENATE COMMITTEE Business and Industry DATE 3/25/93

NAME	PRESENT	ABSENT	EXCUSED
Senator Lynch	✓		
Senator Christiaens	✓		
Senator Brenden	✓		
Senator Gage	✓		
Senator Hager	✓		✓
Senator Harding	✓		
Senator Kennedy	✓		
Senator Klampe	✓		
Senator Koehnke	✓		
Senator Mesaros	✓		
Senator Rea			
Senator Bruski-Maus	✓		
Senator Wilson	✓		

HOUSE STANDING COMMITTEE REPORT

April 7, 1993

Page 1 of 4

Mr. Speaker: We, the committee on Business and Economic Development report that Senate Bill 430 (third reading copy - blue) be concurred in as amended.

Signed: _____

Steve Benedict
Steve Benedict, Chair

And, that such amendments read:

Carried by: ~~Rep. Tom Nelson~~

Tom Nelson

1. Title, line 20.

Following: "33-10-224,"

Insert: "33-10-227, 33-10-230,"

2. Page 5, line 3.

Following: "all"

Insert: "or part of"

3. Page 5, line 10.

Following: "based"

Insert: "solely"

4. Page 71, line 6.

Following: "commissioner."

Insert: "The statement must be completed in accordance with the annual statement instructions and the accounting practices and procedures manual of the national association of insurance commissioners. The statement must be accompanied by an actuarial opinion attesting to the adequacy of the insurer's reserves."

5. Page 76, lines 11 and 12.

Strike: "its" on line 11

Insert: "the"

Following: "duties" on line 12

Insert: "that are required to meet the minimum financial regulatory standards established by the national association of insurance commissioners"

Committee Vote:

Yes 15, No 3.

791427SC.Hpf

134

6. Page 103, line 6.

Strike: "may"

Insert: "does"

7. Page 127, line 20.

Following: line 19

Insert: "Section 69. Section 33-10-227, MCA, is amended to read:

"33-10-227. Assessments -- abatement -- basis for ratesetting. (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at ~~such~~ the times and for ~~such~~ the amounts as the board finds necessary. The board shall collect the assessments after 30 days' written notice to the member insurers before payment is due.

(2) There ~~shall be~~ are two classes of assessments, as follows:

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(b) Class B assessments ~~shall~~ must be made to the extent necessary to carry out the powers and duties of the association under 33-10-219 and 33-10-220(1) with regard to an impaired insurer.

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(b) Class B assessments against member insurers for each account ~~shall~~ must be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account bear to ~~such~~ the premiums received on business in this state by all assessed member insurers.

(c) Assessments for funds to meet the requirements of the association with respect to an impaired insurer ~~shall~~ may not be made until necessary to implement the purposes of this part. Classification of assessments under subsection (2) and computation of assessments under this subsection ~~shall~~ must be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account ~~shall~~ may not in any one calendar year exceed 2% of ~~such~~ the

insurer's premiums in this state on the policies covered by the account.

(5) In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in subsection (4), the amount by which ~~such~~ the assessment is abated or deferred ~~shall~~ must be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in either account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds ~~shall~~ must be assessed as soon thereafter as permitted by this part.

(6) If a 1% assessment for any subaccount of the life insurance account and the annuity account in any 1 year does not provide an amount sufficient to carry out the responsibilities of the association, then pursuant to subsection (3)(b), the board shall assess all subaccounts of the life insurance account and the annuity account for the necessary additional amount, subject to the maximum assessment stated in subsection (4).

~~(6)~~ (7) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

~~(7)~~ (8) It ~~shall be~~ is proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this part, to consider the amount reasonably necessary to meet its assessment obligations under this part.

~~(8)~~ (9) The association shall issue to each insurer paying an assessment under this part a certificate of contribution, in a form prescribed by the commissioner, for the amount ~~so~~ paid. All outstanding certificates ~~shall~~ must be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in ~~such~~ that form and for ~~such~~ the amount, if any, and period of time ~~as~~ that the commissioner may approve."

Section 70. Section 33-10-230, MCA, is amended to read:

"33-10-230. Tax -- writeoffs of certificates of contribution. (1) Unless a longer period has been allowed by the commissioner, a member insurer shall at its option have the right

to show a certificate of contribution for a Class B assessment only as an asset in the form approved by the commissioner pursuant to 33-10-227~~(8)~~(9), at percentages of the original face amount approved by the commissioner, for calendar years as follows:

- (a) 100% for calendar year of issuance;
- (b) 80% for the first calendar year after year of issuance;
- (c) 60% for second calendar year after year of issuance;
- (d) 40% for third calendar year after year of issuance;
- (e) 20% for fourth calendar year after year of issuance.

(2) The insurer may offset the amount written off by it in the calendar year under subsection (1) above against its premium tax liability to this state accrued with respect to business transacted in ~~such~~ the calendar year.

(3) Any sums acquired by refund, pursuant to 33-10-227~~(6)~~(7), from the association which have therefore been written off by contributing insurers and offset against premium taxes as provided in subsection (2) above and are not then needed for purposes of this part ~~shall~~ must be paid by the association to the commissioner and ~~by him~~ deposited by the commissioner with the state treasurer for credit to the general fund of this state. ""

Renumber: subsequent sections.

-END-

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Business & Ec. COMMITTEE SB 430
DATE April 6, 1993 SPONSOR(S) C. Christensen
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Frank Cote	SAD	✓	
Debbie Berney	Prof. Ins. Ass. of MT	✓	
Bill Olson	AARP	✓	
Larry Akey	MT Assoc. of Life Underwriters	✓	
Darlyn Nichols	Sec. Treas. MT Assn. of L.U.		
Roger McGlen	ITAM	✓	
Mark E. Nelson	St. Auditor	✓	
Patrick M. Driscoll	AMERICAN COUNCIL OF LIFE INSURANCE	✓	
E. Caplin	MSCA	✓	
Guigeline Denmark	Am. Ins. Assoc.	✓ w/ amendment	
Tom Hopgood	HLTH Ins. America	✓	
Steve Brown	Blue Cross-Blue Shield	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

SENATE BILL NO. 430

INTRODUCED BY CHRISTIAENS, WATERMAN, WILSON, KOEHNKE,

COCCHIARELLA, TUSS, T. NELSON, HARDING

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO INSURERS; PROVIDING REGULATION OF BUSINESS TRANSACTED WITH PRODUCER-CONTROLLED INSURERS; PROVIDING CREDIT FOR REINSURANCE; REGULATING MANAGING GENERAL AGENTS; PROVIDING FOR INTERSTATE EXCHANGE OF INSURER REGULATORY INFORMATION; REGULATING REINSURANCE INTERMEDIARIES; REVISING THE LAWS REGULATING INSURANCE HOLDING COMPANIES, LIFE AND HEALTH AND CASUALTY AND PROPERTY INSURANCE GUARANTY ASSOCIATIONS, INSURER FINANCIAL EXAMINATIONS, RISK RETENTION GROUPS, AND INSURER SUPERVISION, REHABILITATION, AND LIQUIDATION; PROVIDING FOR AN ANNUAL ACCREDITATION FEE; AMENDING SECTIONS 33-1-401, 33-2-501, 33-2-532, 33-2-533, 33-2-701, 33-2-708, 33-2-1111, 33-2-1114, 33-2-1115, 33-2-1201, 33-2-1331, 33-2-1342, 33-2-1346, 33-10-105, 33-10-111, 33-10-114, 33-10-201, 33-10-202, 33-10-203, 33-10-210, 33-10-217, 33-10-218, 33-10-224, 33-10-227, 33-10-230, 33-11-103, 33-11-104, 33-11-105, 33-11-108, 33-11-109, AND 33-22-804, MCA; AND REPEALING SECTIONS 33-1-403, 33-1-412, 33-2-1205, AND 33-10-229, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because the department of insurance is granted authority to adopt rules for the administration and enforcement of laws regulating reinsurance intermediaries, managing general agents, holding company systems, insurer financial audits, and examinations and standards for companies considered to be in hazardous financial condition.

The legislature contemplates that rules adopted by the department should, at a minimum, endeavor to create an insurer regulatory structure in Montana that is reasonable and effective, that substantially resembles the model regulatory structure developed by the national association of insurance commissioners, that is eligible for national accreditation to enable insurers domiciled in Montana to do business in this state and other states with a maximum of financial stability and a minimum of regulatory difficulty, and that encourages the startup and expansion of insurance companies domiciled in Montana.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 27]:

(1) "Accredited state" means a state in which the department of insurance or regulatory agency has qualified

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1 as meeting the minimum financial regulatory standards
2 promulgated and established from time to time by the
3 national association of insurance commissioners.

4 (2) "Actuary" means a person who is a member in good
5 standing of the American academy of actuaries.

6 (3) "Captive insurer" means:

7 (a) an insurer that is owned by another entity and
8 whose exclusive purpose is to insure risks of the parent
9 entity and its affiliates; or

10 (b) in the case of a group or association, an insurer
11 that is owned by the member insureds and whose exclusive
12 purpose is to insure risks to member insureds and their
13 affiliates.

14 (4) "Control" or "controlled" has the meaning defined
15 in 33-2-1101.

16 (5) "Controlled insurer" means an authorized insurer
17 that is controlled, directly or indirectly, by a producer.

18 (6) "Controlling person" means a person, firm,
19 association, or corporation that has the power to direct or
20 cause to be directed the management, control, or activities
21 of a reinsurance intermediary.

22 (7) "Controlling producer" means a producer who,
23 directly or indirectly, controls an insurer.

24 (8) (a) "Insurer" means any person, firm, association,
25 or corporation authorized, under Title 33, chapter 2, part

1 1, to transact insurance business in this state.

2 (b) The following are not insurers:

3 (i) risk retention groups as defined in:

4 (A) the Superfund Amendments and Reauthorization Act of
5 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986);

6 (B) the Liability Risk Retention Act of 1986, 15 U.S.C.
7 3901, et seq.; or

8 (C) Title 33, chapter 11, part 1;

9 (ii) residual market pools and joint underwriting
10 authorities or associations; or

11 (iii) captive insurers.

12 (9) "Licensed producer" means a producer or reinsurance
13 intermediary licensed pursuant to this title.

14 (10) (a) "Managing general agent" means a person who:

15 (i) manages all or part of the insurance business of an
16 insurer and acts as an agent for the insurer;

17 (ii) either separately or together with affiliates,
18 produces, directly or indirectly, and underwrites an amount
19 of gross written premiums equal to or more than 5% of the
20 policyholder surplus in any quarter or year; and

21 (iii) engages in one or more of the following activities
22 on the business produced:

23 (A) adjustment or payment of claims in excess of an
24 amount determined by the commissioner; or

25 (B) negotiation of reinsurance on behalf of the

1 insurer.

2 (b) Notwithstanding the provisions of subsection
3 (10)(a), the following persons are not considered managing
4 general agents:

5 (i) an employee of the insurer;

6 (ii) a manager of the United States branch of an alien
7 insurer;

8 (iii) an underwriting manager who, pursuant to contract,
9 manages all OR PART OF the insurance operations of the
10 insurer, is under common control with the insurer, is
11 subject to Title 33, chapter 2, part 11, and whose
12 compensation is not based SOLELY on the value of premiums
13 written; or

14 (iv) the attorney-in-fact authorized by and acting for
15 the subscribers of a reciprocal insurer or an interinsurance
16 exchange under powers of attorney.

17 (11) "NAIC" means the national association of insurance
18 commissioners.

19 (12) "Producer" means an insurance producer or
20 reinsurance intermediary authorized or licensed pursuant to
21 this title.

22 (13) (a) "Qualified United States financial institution"
23 means a financial institution that:

24 (i) is organized or licensed under the laws of the
25 United States or any state;

1 (ii) is regulated, supervised, and examined by federal
2 or state authorities having regulatory authority over banks
3 and trust companies and that either:

4 (A) is determined by the commissioner to meet the
5 standards of financial condition and standing considered
6 necessary and appropriate to regulate the quality of
7 financial institutions whose letters of credit are
8 acceptable to the commissioner; or

9 (B) is eligible to act as a fiduciary of a trust or has
10 been granted authority to operate with fiduciary powers.

11 (b) For purposes of this definition, the commissioner
12 may by rule adopt standards of financial condition and
13 standing that may be developed from time to time by the
14 securities valuation office of the NAIC.

15 (14) "Reinsurance intermediary" means a reinsurance
16 intermediary-broker or a reinsurance intermediary-manager.

17 (15) "Reinsurance intermediary-broker" means a person,
18 other than an officer or employee of the ceding insurer, who
19 solicits, negotiates, or places reinsurance cessions or
20 retrocessions on behalf of a ceding insurer without the
21 authority or power to bind reinsurance on behalf of the
22 insurer.

23 (16) (a) "Reinsurance intermediary-manager" means a
24 person who:

25 (i) has authority to bind or who manages all or part of

1 the assumed reinsurance business of a reinsurer, including
2 the management of a separate division, department, or
3 underwriting office; and

4 (ii) acts as an agent for the reinsurer, whether known
5 as a reinsurance intermediary-manager, manager, or other
6 similar term.

7 (b) The following persons are not considered
8 reinsurance intermediary-managers with respect to the
9 reinsurer:

10 (i) an employee of the reinsurer;

11 (ii) a manager of the United States branch of an alien
12 reinsurer;

13 (iii) an underwriting manager who, pursuant to contract,
14 manages all of the reinsurance operations of the reinsurer,
15 is under common control with the reinsurer, is subject to
16 Title 33, chapter 2, part 11, and whose compensation is not
17 based on the volume of premiums written; or

18 (iv) a person who manages groups, associations, pools,
19 or organizations of insurers that engage in joint
20 underwriting or joint reinsurance and that are subject to
21 examination by the insurance commissioner of the state in
22 which the manager's principal business office is located.

23 (17) "Reinsurer" means a person, firm, association, or
24 corporation licensed in this state under this title as an
25 insurer with authority to assume reinsurance.

1 (18) "Underwrite" means the authority to accept or
2 reject risk on behalf of the insurer.

3 NEW SECTION. Section 2. Filing requirements. (1) Each
4 domestic, foreign, and alien insurer authorized to transact
5 insurance in this state shall, on or before March 1 of each
6 year, file with the NAIC a copy of its annual statement
7 convention form, along with any additional filings for the
8 preceding year as prescribed by the commissioner. The
9 information filed with the NAIC must be in the same format
10 and scope as that required by the commissioner and must
11 include the signed jurat page and the actuarial
12 certification. Amendments to the annual statement filing
13 that are subsequently filed with the commissioner must also
14 be filed with the NAIC.

15 (2) Foreign insurers domiciled in a state that has a
16 law substantially similar to this section are considered to
17 be in compliance with this section.

18 NEW SECTION. Section 3. Immunity of NAIC. In the
19 absence of actual malice, members of the NAIC; their
20 authorized committees, subcommittees, task forces,
21 delegates, and employees; and all others charged with the
22 responsibility of collecting and processing the information
23 developed from the filing of the annual statement convention
24 forms are considered to act under the authority of [sections
25 2 through 4]. They are not subject to civil liability for

libel, slander, or any other cause of action arising from their collection, review, analysis, or dissemination of information collected from the filings required by [sections 1 through 38].

NEW SECTION. Section 4. Confidentiality. All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the department by the NAIC insurance regulatory information systems are confidential and may not be disclosed by the department.

NEW SECTION. Section 5. Applicability of minimum standards. (1) The provisions of [section 6] apply if, in any calendar year, the aggregate amount of gross written premiums on business placed with a controlled insurer by a controlling producer is equal to or greater than 5% of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the prior year.

(2) Notwithstanding the provisions of subsection (1), the provisions of [section 6] do not apply if:

(a) the controlling producer:

(i) does not receive compensation based upon the amount of premiums written in connection with the insurance and places insurance only with:

(A) the controlled insurer; or

(B) the controlled insurer and a member or members of

the controlled insurer's holding company system or the controlled insurer's parent, affiliate, or subsidiary; and

(ii) accepts insurance placements only from nonaffiliated subproducers and not directly from insureds; and

(b) except for insurance business written through a residual market facility, the controlled insurer accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

NEW SECTION. Section 6. Minimum standards. Unless there is a written contract between a controlling producer and a controlled insurer specifying the responsibilities of each party, the controlled insurer may not accept business from the controlling producer and the controlling producer may not place business with the controlled insurer. The contract must be approved by the board of directors of the controlled insurer and must contain the following minimum provisions:

(1) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination.

(2) The controlling producer shall render to the

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1 controlled insurer accounts detailing all material
2 transactions, including information necessary to support all
3 commissions, charges, and other fees received by or owing to
4 the controlling producer.

5 (3) On at least a monthly basis, the controlling
6 producer shall remit to the controlled insurer all funds due
7 under the terms of the contract. The due date must be fixed
8 so that premiums or installments of premiums collected must
9 be remitted no later than 90 days after the effective date
10 of any policy placed with the controlled insurer under the
11 contract.

12 (4) In accordance with the provisions of this title,
13 all funds collected for the controlled insurer's account
14 must be held by the controlling producer in a fiduciary
15 capacity, in one or more appropriately identified bank
16 accounts in banks that are members of the federal reserve
17 system. However, funds of a controlling producer not
18 required to be licensed in this state must be maintained in
19 compliance with the requirements of the controlling
20 producer's domiciliary jurisdiction.

21 (5) The controlling producer shall maintain separately
22 identifiable records of business written for the controlled
23 insurer.

24 (6) The contract may not be assigned in whole or in
25 part by the controlling producer.

1 (7) The controlled insurer shall provide the
2 controlling producer with its underwriting standards, rules,
3 procedures, manuals setting forth the rates to be charged,
4 and the conditions for the acceptance or rejection of risks.
5 The controlling producer shall adhere to the standards,
6 rules, procedures, rates, and conditions. The standards,
7 rules, procedures, rates, and conditions must be the same as
8 those applicable to comparable business placed with the
9 controlled insurer by a producer other than the controlling
10 producer.

11 (8) The rates of the commissions, charges, and other
12 fees may not be greater than those applicable to comparable
13 business placed with the controlled insurer by producers
14 other than controlling producers. For purposes of subsection
15 (7) and this subsection, examples of "comparable business"
16 include the same lines of insurance, same kinds of
17 insurance, same kinds of risks, similar policy limits, and
18 similar quality of business.

19 (9) If the contract provides that on insurance business
20 placed with the controlled insurer, the controlling producer
21 is to be compensated contingent upon the controlled
22 insurer's profits on that business, then the compensation
23 may not be determined and paid until at least 5 years after
24 the premiums on liability insurance are earned and at least
25 1 year after the premiums are earned on any other insurance.

1 The commissions may not be paid until the adequacy of the
2 controlled insurer's reserves on remaining claims has been
3 independently verified pursuant to [section 8].

4 (10) The controlled insurer may establish a different
5 limit for each line or subline of business. The controlled
6 insurer shall notify the controlling producer when the
7 applicable limit is approached and may not accept business
8 from the controlling producer if the limit is reached. The
9 controlling producer may not place business with the
10 controlled insurer if it has been notified by the controlled
11 insurer that the limit has been reached.

12 (11) The controlling producer may negotiate but may not
13 bind reinsurance on behalf of the controlled insurer on
14 business that the controlling producer places with the
15 controlled insurer, except that the controlling producer may
16 bind facultative reinsurance contracts pursuant to
17 obligatory facultative agreements if the contract with the
18 controlled insurer contains underwriting guidelines. For
19 reinsurance assumed and ceded, the guidelines must include a
20 list of reinsurers with which the automatic agreements are
21 in effect, the coverages and amounts or percentages that may
22 be reinsured, and commission schedules.

23 NEW SECTION. **Section 7. Audit committee.** Each
24 controlled insurer shall have an audit committee of the
25 board of directors composed of independent directors. The

1 audit committee shall annually review the adequacy of the
2 controlled insurer's loss reserves and meet with management,
3 the controlled insurer's independent certified public
4 accountants, and an independent casualty actuary or other
5 independent loss reserve specialist acceptable to the
6 commissioner.

7 NEW SECTION. **Section 8. Annual report by independent**
8 **actuary.** In addition to any other required loss reserve
9 certification, the controlled insurer shall, on April 1 of
10 each year, file with the commissioner an opinion of an
11 independent casualty actuary or other independent loss
12 reserve specialist acceptable to the commissioner. The
13 opinion must report the loss ratios for each line of
14 business written and must attest to the adequacy of loss
15 reserves established for losses incurred and outstanding as
16 of the yearend, including losses incurred but not reported,
17 on business placed by the producer.

18 NEW SECTION. **Section 9. Annual report to commissioner.**
19 The controlled insurer shall annually report to the
20 commissioner:

- 21 (1) the amount of commissions paid to the producer;
- 22 (2) the percentage the amount represents of the net
- 23 premiums written; and
- 24 (3) comparable amounts and the percentage paid to
- 25 noncontrolling producers for placements of the same kinds of

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1 insurance.

2 **NEW SECTION. Section 10. Disclosure.** (1) Except as
3 provided in subsection (2), the producer, prior to the
4 effective date of the policy, shall deliver written notice
5 to the prospective insured, disclosing the relationship
6 between the producer and the controlled insurer.

7 (2) If the business is placed through a subproducer who
8 is not a controlling producer, the controlling producer
9 shall retain in the controlling producer's records a signed
10 commitment from the subproducer that the subproducer is
11 aware of the relationship between the controlled insurer and
12 the producer and that the subproducer has notified or will
13 notify the insured.

14 **NEW SECTION. Section 11. Penalties.** (1) (a) If the
15 commissioner believes that a controlling producer or any
16 other person has not materially complied with [sections 5
17 through 10] or any regulation or order promulgated under
18 [sections 5 through 10], the commissioner, after notice and
19 opportunity to be heard, may order the controlling producer
20 to cease placing business with the controlled insurer.

21 (b) If it is found that because of the material
22 noncompliance with [sections 5 through 10], the controlled
23 insurer or any policyholder of the controlled insurer has
24 suffered any loss or damage, the commissioner may maintain a
25 civil action or intervene in an action brought by or on

1 behalf of the controlled insurer or policyholder for
2 recovery of compensatory damages for the benefit of the
3 controlled insurer or policyholder or other appropriate
4 relief.

5 (2) The receiver may maintain a civil action for
6 recovery of damages or other appropriate sanctions for the
7 benefit of the insurer if:

8 (a) an order for liquidation or rehabilitation of the
9 controlled insurer has been entered pursuant to Title 33,
10 chapter 2, part 13;

11 (b) the receiver appointed under that order believes
12 that the controlling producer or any other person has not
13 materially complied with [sections 5 through 10] or any
14 regulation or order promulgated under [sections 5 through
15 10]; and

16 (c) the controlled insurer suffered any loss or damage
17 from the noncompliance.

18 (3) This section does not affect the right of the
19 commissioner to impose any other penalties provided for in
20 this title.

21 (4) This section may not be construed to alter or
22 affect the rights of policyholders, claimants, creditors, or
23 other third parties.

24 **NEW SECTION. Section 12. Compliance -- applicability.**

25 (1) Controlled insurers and controlling producers who are

not in compliance with [section 6] on October 1, 1993, have 60 days to come into compliance and shall comply with [section 10] in all policies written or renewed on or after December 1, 1993.

(2) [Sections 5 through 10] apply to insurers that are domiciled in this state or domiciled in a state that is not an accredited state that has in effect a substantially similar law.

(3) The provisions of Title 33, chapter 2, part 11, to the extent they are not superseded by [sections 5 through 10], continue to apply to all entities within holding company systems subject to [sections 5 through 10].

(4) An insurer may not continue to use the services of a managing general agent after December 1, 1993, unless the use complies with [sections 14 through 18].

(5) An insurer or reinsurer may not continue to use the services of a reinsurance intermediary after December 1, 1993, unless the use complies with [sections 19 through 27].

NEW SECTION. Section 13. Rulemaking authority. (1) The commissioner may adopt rules implementing the provisions of [sections 1 through 38].

(2) The authority of the commissioner to adopt rules is specifically extended, without limitation, to establish standards for companies considered to be in hazardous financial condition, to require annual audited financial

reports, to regulate life and health reinsurance agreements, to provide for reports to the commissioner by holding company systems, and to establish accounting practices and procedures to be used by insurers in their annual statements.

NEW SECTION. Section 14. Licensure of managing general agent. (1) A person, firm, association, or corporation may not act in the capacity of a managing general agent with respect to risks located in this state for an insurer licensed in this state unless the person is a licensed producer in this state.

(2) A person, firm, association, or corporation may not act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless the person is licensed as a resident or nonresident producer in this state pursuant to the provisions of [sections 14 through 18].

(3) The commissioner may require a bond in an amount acceptable to the commissioner for the protection of the insurer.

(4) The commissioner may require the managing general agent to maintain a policy on errors and omissions.

NEW SECTION. Section 15. Managing general agent -- required contract provisions. A person acting in the capacity of a managing general agent may not place business

1 with an insurer unless there is in force a written contract
2 between the parties that sets forth the responsibilities of
3 each party. Whenever both parties share responsibility for a
4 particular function, the written contract must specify the
5 division of responsibilities. The contract must provide at
6 least the following:

7 (1) The insurer may terminate the contract for cause
8 upon written notice to the managing general agent. The
9 insurer may suspend the underwriting authority of the
10 managing general agent during the pendency of any dispute
11 regarding the cause for termination.

12 (2) The managing general agent shall render accounts to
13 the insurer, detailing all transactions, and shall remit all
14 funds due under the contract to the insurer on not less than
15 a monthly basis.

16 (3) All funds collected for the account of an insurer
17 must be held by the managing general agent in a fiduciary
18 capacity in a bank that is a member of the federal reserve
19 system. This account must be used for all payments on behalf
20 of the insurer. The managing general agent may not retain
21 more than 3 months' estimated claims payments and allocated
22 loss adjustment expenses.

23 (4) Separate records of business written by the
24 managing general agent must be maintained. The insurer has
25 access to and may copy all accounts and records that are

1 related to its business, in a form usable by the insurer.
2 The commissioner has access to all books, bank accounts, and
3 records of the managing general agent in a form usable to
4 the commissioner. The records must be retained pursuant to
5 33-3-401.

6 (5) The contract may not be assigned in whole or in
7 part by the managing general agent.

8 (6) The contract must contain appropriate underwriting
9 guidelines, including:

- 10 (a) the maximum annual premium volume;
- 11 (b) the basis of the rates to be charged;
- 12 (c) the types of risks that may be written;
- 13 (d) maximum limits of liability;
- 14 (e) any applicable exclusions;
- 15 (f) the territorial limitations;
- 16 (g) policy cancellation provisions; and
- 17 (h) the maximum policy period.

18 (7) The insurer may cancel or decline to renew any
19 policy of insurance, as provided by law.

20 (8) If the contract permits the managing general agent
21 to settle claims on behalf of the insurer:

22 (a) all claims must be reported to the company in a
23 timely manner;

24 (b) a copy of the claims file must be sent to the
25 insurer at its request or as soon as it becomes known that

1 the claim:

2 (i) has the potential to exceed an amount determined by
3 the commissioner or actually exceeds the limit set by the
4 company, whichever is less;

5 (ii) involves a coverage dispute;

6 (iii) may exceed the managing general agent's claims
7 settlement authority;

8 (iv) is open for more than 6 months; or

9 (v) is closed by payment of an amount set by the
10 commissioner or an amount set by the company, whichever is
11 less;

12 (c) all claims files are the joint property of the
13 insurer and managing general agent. However, upon an order
14 of liquidation of the insurer, the files become the sole
15 property of the insurer or its estate. The managing general
16 agent has reasonable access to and may copy the files on a
17 timely basis.

18 (d) any settlement authority granted to the managing
19 general agent may be terminated for cause upon the insurer's
20 written notice to the managing general agent or upon the
21 termination of the contract. The insurer may suspend the
22 settlement authority during the pendency of any dispute
23 regarding the cause for termination.

24 (9) When electronic claims files are in existence, the
25 contract must address the timely transmission of the data.

1 (10) If the contract provides for a sharing of interim
2 profits by the managing general agent and the managing
3 general agent has the authority to determine the amount of
4 the interim profits, whether by establishing loss reserves
5 or controlling claim payments or in any other manner,
6 interim profits may not be paid to the managing general
7 agent until:

8 (a) 1 year after they are earned for property insurance
9 business;

10 (b) 5 years after they are earned on casualty business;
11 and

12 (c) the profits have been verified.

13 (11) The managing general agent may not:

14 (a) bind reinsurance or retrocessions on behalf of the
15 insurer, except that the managing general agent may bind
16 facultative reinsurance contracts pursuant to obligatory
17 facultative agreements if the contract with the insurer
18 contains reinsurance underwriting guidelines, including for
19 reinsurance assumed and ceded:

20 (i) a list of reinsurers with which automatic
21 agreements are in effect;

22 (ii) the coverages and amounts or percentages that may
23 be reinsured; and

24 (iii) commission schedules;

25 (b) commit the insurer to participate in insurance or

1 reinsurance syndicates;

2 (c) appoint any producer without ensuring that the
3 producer is lawfully licensed to transact the type of
4 insurance for which the producer is appointed;

5 (d) without prior approval of the insurer, pay or
6 commit the insurer to pay a claim over a specified amount,
7 net of reinsurance, which may not exceed 1% of the insurer's
8 policyholder's surplus as of December 31 of the last
9 completed calendar year;

10 (e) collect any payment from a reinsurer or commit the
11 insurer to any claim settlement with a reinsurer without the
12 prior approval of the insurer. If prior approval is given, a
13 report must be promptly forwarded to the insurer.

14 (f) permit its subproducer to serve on the insurer's
15 board of directors;

16 (g) jointly employ an individual who is employed with
17 the insurer; or

18 (h) appoint a submanaging general agent.

19 NEW SECTION. Section 16. Duties of insurers. (1) The
20 insurer must have on file an independent financial
21 examination, in a form acceptable to the commissioner, of
22 each managing general agent with which it has done business.

23 (2) If a managing general agent establishes loss
24 reserves, the insurer shall annually obtain the opinion of
25 an actuary attesting to the adequacy of loss reserves

1 established for losses incurred and outstanding on business
2 produced by the managing general agent. This is in addition
3 to any other required loss reserve certification.

4 (3) At least semiannually, the insurer shall conduct an
5 onsite review of the underwriting and claims processing
6 operations of the managing general agent.

7 (4) Binding authority for all reinsurance contracts or
8 participation in insurance or reinsurance syndicates rests
9 with an officer of the insurer who is not affiliated with
10 the managing general agent.

11 (5) Within 30 days of entering into or termination of a
12 contract with a managing general agent, the insurer shall
13 provide the commissioner with written notification of the
14 appointment or termination. Notices of appointment of a
15 managing general agent must include a statement of duties
16 that the applicant is expected to perform on behalf of the
17 insurer, the lines of insurance for which the applicant is
18 to be authorized to act, and any other information the
19 commissioner may request.

20 (6) An insurer shall review its books and records each
21 quarter to determine if any producer has become a managing
22 general agent. If the insurer determines that a producer has
23 become a managing general agent, the insurer shall promptly
24 notify the producer and the commissioner of the
25 determination and the insurer and the producer shall comply

1 with [sections 14 through 18] within 30 days.

2 (7) An insurer may not appoint to its board of
3 directors an officer, director, employee, subproducer, or
4 controlling shareholder of its managing general agent. This
5 subsection does not apply to relationships governed by Title
6 33, chapter 2, part 11, or [sections 5 through 10].

7 NEW SECTION. Section 17. Examination authority. The
8 acts of the managing general agent are considered to be the
9 acts of the insurer on whose behalf it is acting. A managing
10 general agent may be examined as if it were the insurer.

11 NEW SECTION. Section 18. Penalties and liabilities.
12 (1) If, after a hearing conducted in accordance with Title
13 33, chapter 1, part 7, the commissioner finds that a person
14 has violated any provision of [sections 14 through 18], the
15 commissioner may order:

16 (a) a penalty in an amount of \$5,000 for each separate
17 violation;

18 (b) revocation or suspension of the producer's license;
19 and

20 (c) the managing general agent to reimburse the
21 insurer, the rehabilitator, or a liquidator of the insurer
22 for any losses incurred by the insurer caused by a violation
23 of [sections 14 through 18] committed by the managing
24 general agent.

25 (2) An order of the commissioner pursuant to subsection

1 (1) is subject to judicial review pursuant to 33-1-711.

2 (3) This section does not limit the power of the
3 commissioner to impose any other penalty provided in this
4 title.

5 (4) [Sections 14 through 18] do not limit the rights of
6 policyholders, claimants, or auditors.

7 NEW SECTION. Section 19. Licensure of reinsurance
8 intermediaries. (1) A person, firm, association, or
9 corporation may not act as a reinsurance intermediary-broker
10 in this state if the reinsurance intermediary-broker
11 maintains an office directly, as a member or employee of a
12 firm or association, or as an officer, director, or employee
13 of a corporation:

14 (a) in this state, unless the reinsurance
15 intermediary-broker is a licensed producer in this state; or

16 (b) in another state, unless the reinsurance
17 intermediary-broker is a licensed producer in this state or
18 another state that has a law substantially similar to this
19 law or unless the reinsurance intermediary-broker is
20 licensed in this state as a nonresident reinsurance
21 intermediary.

22 (2) A person, firm, association, or corporation may not
23 act as a reinsurance intermediary-manager:

24 (a) for a reinsurer domiciled in this state, unless the
25 reinsurance intermediary-manager is a licensed producer in

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1 this state;

2 (b) in this state, if the reinsurance
3 intermediary-manager maintains an office either directly or
4 as a member or employee of a firm or association or as an
5 officer, director, or employee of a corporation in this
6 state, unless the reinsurance intermediary-manager is a
7 licensed producer in this state; or

8 (c) in another state for a nondomestic insurer, unless
9 the reinsurance intermediary-manager is a licensed producer
10 in this state or another state that has a law substantially
11 similar to this law or unless the person is licensed in this
12 state as a nonresident insurance intermediary.

13 (3) Subject to subsection (2), the commissioner may
14 require a reinsurance intermediary-manager to:

15 (a) file a bond in an amount from an insurer acceptable
16 to the commissioner for the protection of the reinsurer; and

17 (b) maintain a policy on errors and omissions in an
18 amount acceptable to the commissioner.

19 (4) (a) The commissioner may issue a reinsurance
20 intermediary license to any person, firm, association, or
21 corporation that has complied with the requirements of
22 [sections 19 through 27]. A license issued to a firm or
23 association authorizes all the members of the firm or
24 association and any designated employees to act as
25 reinsurance intermediaries under the license. All authorized

1 persons must be named in the application and in any
2 supplements to the application. A license issued to a
3 corporation must authorize all of the officers and any
4 designated employees and directors to act as reinsurance
5 intermediaries on behalf of the corporation. All authorized
6 persons must be named in the application and in any
7 supplements to the application.

8 (b) If the applicant for a reinsurance intermediary
9 license is a nonresident, the applicant, as a condition
10 precedent to receiving or holding a license, shall designate
11 the commissioner as the agent for service of process in the
12 manner provided for by this title for designation of service
13 of process upon unauthorized insurers. The applicant shall
14 also furnish the commissioner with the name and address of a
15 resident of this state upon whom notices or orders of the
16 commissioner or process affecting the nonresident
17 reinsurance intermediary may be served. The licensee shall
18 promptly notify the commissioner in writing of each change
19 in its designated agent for service of process, and the
20 change may not become effective until acknowledged by the
21 commissioner.

22 (5) (a) The commissioner may refuse to issue a
23 reinsurance intermediary license if, in the commissioner's
24 judgment:

25 (i) the applicant, a person named on the application,

1 or a member, principal, officer, or director of the
2 applicant is not trustworthy;

3 (ii) a controlling person of the applicant is not
4 trustworthy to act as a reinsurance intermediary; or

5 (iii) any of the persons listed in subsection (5)(a)(i)
6 or (5)(a)(ii) has given cause for revocation or suspension
7 of the license or has failed to comply with any prerequisite
8 for the issuance of the license.

9 (b) Upon written request, the commissioner shall
10 furnish a summary of the basis for refusal to issue a
11 license. The document is privileged and is not subject to
12 public disclosure under Title 2, chapter 6, part 1.

13 (6) Licensed attorneys of this state, when acting in
14 their professional capacity, are exempt from this section.

15 NEW SECTION. **Section 20.** Required contract provisions
16 -- reinsurance intermediary-brokers. Transactions between a
17 reinsurance intermediary-broker and the insurer it
18 represents must be entered into pursuant to a written
19 authorization, specifying the responsibilities of each
20 party. The authorization must, at a minimum, contain the
21 following provisions:

22 (1) The insurer may terminate the reinsurance
23 intermediary-broker's authority at any time.

24 (2) The reinsurance intermediary-broker shall render to
25 the insurer accounts accurately detailing all material

1 transactions, including information necessary to support all
2 commissions, charges, and other fees received by or owing to
3 the reinsurance intermediary-broker. The reinsurance
4 intermediary-broker shall remit all funds due to the insurer
5 within 30 days of receipt.

6 (3) All funds collected for the insurer's account must
7 be held by the reinsurance intermediary-broker in a
8 fiduciary capacity in a bank that is a qualified United
9 States financial institution.

10 (4) The reinsurance intermediary-broker shall comply
11 with the requirements of [section 21].

12 (5) The reinsurance intermediary-broker shall comply
13 with the written standards established by the insurer for
14 the cession or retrocession of all risks.

15 (6) The reinsurance intermediary-broker shall disclose
16 to the insurer any relationship with any reinsurer to which
17 business will be ceded or retroceded.

18 NEW SECTION. **Section 21.** Books and records --
19 reinsurance intermediary-brokers. (1) For at least 10 years
20 after expiration of each contract of reinsurance transacted
21 by the reinsurance intermediary-broker, the reinsurance
22 intermediary-broker shall keep a complete record for each
23 transaction, showing:

24 (a) the type of contract, limits, underwriting
25 restrictions, classes or risks, and territory;

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(b) the period of coverage, including the effective and expiration dates, cancellation provisions, and notice required for cancellation;

(c) the reporting and settlement requirements of balances;

(d) the rate used to compute the reinsurance premium;

(e) the names and addresses of assuming reinsurers;

(f) the rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker;

(g) any related correspondence and memorandums;

(h) the proof of placement;

(i) the details regarding retrocessions handled by the reinsurance intermediary-broker, including the identity of the party making the retrocession and the percentage of each contract assumed or ceded;

(j) the financial records, including but not limited to premium and loss accounts; and

(k) when the reinsurance intermediary-broker procures a reinsurance contract on behalf of a licensed ceding insurer:

(i) directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) if placed through a representative of the assuming reinsurer, other than an employee, written evidence that the

reinsurer has delegated binding authority to the representative.

(2) The insurer has access to and may copy and audit all accounts and records maintained by the reinsurance intermediary-broker that are related to the insurer's business, in a form usable by the insurer.

NEW SECTION. Section 22. Duties of insurers utilizing the services of a reinsurance intermediary-broker. (1) An insurer may not engage the services of any person, firm, association, or corporation to act as a reinsurance intermediary-broker on its behalf unless the person is licensed as required by [section 19].

(2) An insurer may not employ an individual who is employed by a reinsurance intermediary-broker with which it transacts business unless the reinsurance intermediary-broker is under common control with the insurer and is subject to the provisions of Title 33, chapter 2, part 11.

(3) The insurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-broker with which it transacts business.

NEW SECTION. Section 23. Required contract provisions -- reinsurance intermediary-managers. Transactions between a reinsurance intermediary-manager and the reinsurer it represents in that capacity may only be entered into

1 pursuant to a written contract specifying the
2 responsibilities of each party. The contract must be
3 approved by the reinsurer's board of directors. At least 30
4 days before the reinsurer assumes or cedes business through
5 a producer, a true copy of the approved contract must be
6 filed with the commissioner for approval. The contract must,
7 at a minimum, include the following provisions:

8 (1) The reinsurer may terminate the contract for cause
9 upon written notice to the reinsurance intermediary-manager.
10 The reinsurer may immediately suspend the authority of the
11 reinsurance intermediary-manager to assume or cede business
12 during the pendency of any dispute regarding the cause for
13 termination.

14 (2) The reinsurance intermediary-manager shall render
15 accounts to the reinsurer accurately detailing all material
16 transactions, including information necessary to support all
17 commissions, charges, and other fees received by or owed to
18 the reinsurance intermediary-manager, and shall remit all
19 funds due under the contract to the reinsurer on not less
20 than a monthly basis.

21 (3) All funds collected for the reinsurer's account
22 will be held by the reinsurance intermediary-manager in a
23 fiduciary capacity in a bank that is a qualified United
24 States financial institution. The reinsurance
25 intermediary-manager may not retain more than 3 months'

1 estimated claims payments and allocated loss adjustment
2 expenses. The reinsurance intermediary-manager shall
3 maintain a separate bank account for each reinsurer that it
4 represents.

5 (4) For at least 10 years after expiration of each
6 contract of reinsurance transacted by the reinsurance
7 intermediary-manager, the reinsurance intermediary-manager
8 shall keep a complete record for each transaction showing:

9 (a) the type of contract, limits, underwriting
10 restrictions, classes or risks, and territory;

11 (b) the period of coverage, including effective and
12 expiration dates, cancellation provisions, notice required
13 for cancellation, and disposition of outstanding reserves on
14 covered risks;

15 (c) the reporting and settlement requirements of
16 balances;

17 (d) the rate used to compute the reinsurance premium;

18 (e) the names and addresses of reinsurers;

19 (f) the rates of all reinsurance commissions, including
20 the commissions on any retrocessions handled by the
21 reinsurance intermediary-manager;

22 (g) related correspondence and memorandums;

23 (h) proof of placement;

24 (i) details regarding retrocessions handled by the
25 reinsurance intermediary-manager, as permitted by [section

25], including the identity of persons making the retrocessions and the percentage of each contract assumed or ceded;

(j) financial records, including but not limited to premium and loss accounts; and

(k) when the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer:

(i) directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) if placed through a representative of the assuming reinsurer, other than an employee, written evidence that the assuming reinsurer has delegated binding authority to the representative.

(5) The reinsurer will have access to and the right to copy all accounts and records maintained by the reinsurance intermediary-manager related to its business in a form usable by the reinsurer.

(6) The contract may not be assigned in whole or in part by the reinsurance intermediary-manager.

(7) The reinsurance intermediary-manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.

(8) The rates, terms, and purposes of commissions,

charges, and other fees that the reinsurance intermediary-manager may levy against the reinsurer must be set forth.

(9) If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer:

(a) all claims must be reported to the reinsurer in a timely manner;

(b) a copy of the claim file must be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(i) has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;

(ii) involves a coverage dispute;

(iii) may exceed the reinsurance intermediary-manager's claims settlement authority;

(iv) is open for more than 6 months; or

(v) is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer;

(c) all claim files must be the joint property of the reinsurer and the reinsurance intermediary-manager. However, upon an order of liquidation of the reinsurer, the files become the sole property of the reinsurer or its estate. The reinsurance intermediary-manager must have reasonable access

to and the right to copy the files on a timely basis;

(d) any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

(10) If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, the interim profits may not be paid until:

(a) 1 year after the end of each underwriting period for property business;

(b) 5 years after the end of each underwriting period for casualty business;

(c) a later period set by the commissioner for specified lines of insurance; and

(d) the adequacy of reserves on remaining claims has been verified pursuant to [section 25].

(11) The reinsurance intermediary-manager shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant.

(12) The reinsurer shall, at least semiannually, conduct an onsite review of the underwriting and claims processing operations of the reinsurance intermediary-manager.

(13) The reinsurance intermediary-manager shall disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with the insurer pursuant to the contract.

(14) Within the scope of its actual or apparent authority, the acts of the reinsurance intermediary-manager are considered to be the acts of the reinsurer on whose behalf it is acting.

NEW SECTION. **Section 24. Prohibited acts.** A reinsurance intermediary-manager may not:

(1) bind retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may bind facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for retrocessions. The guidelines must include a list of reinsurers with which automatic agreements are in effect and, for each reinsurer, must include the coverages, amounts of percentages that may be reinsured, and commission schedules.

(2) commit the reinsurer to participate in reinsurance syndicates;

(3) appoint any producer without ensuring that the producer is licensed to transact the type of reinsurance for which the producer is appointed;

(4) without prior approval of the reinsurer, pay or

1 commit the reinsurer to pay a claim, net of retrocessions,
2 that exceeds the lesser of an amount specified by the
3 reinsurer or 1% of the reinsurer's policyholder's surplus as
4 of December 31 of the last complete calendar year;

5 (5) collect any payment from a party making a
6 retrocession, or commit the reinsurer to any claim
7 settlement with a party making a retrocession, without prior
8 approval of the reinsurer. If prior approval is given, a
9 report must be promptly forwarded to the reinsurer.

10 (6) jointly employ an individual who is employed by the
11 reinsurer unless the reinsurance intermediary-manager is
12 under common control with the reinsurer subject to Title 33,
13 chapter 2, part 11;

14 (7) appoint a subreinsurance intermediary-manager.

15 **NEW SECTION. Section 25. Duties of reinsurers using**
16 **services of reinsurance intermediary-manager.** (1) A
17 reinsurer may not engage the services of any person, firm,
18 association, or corporation as a reinsurance
19 intermediary-manager on its behalf unless the person is
20 licensed as required by [section 19].

21 (2) The reinsurer shall annually obtain a copy of
22 statements of the financial condition of each reinsurance
23 intermediary-manager that the reinsurer has engaged,
24 prepared by an independent certified accountant, in a form
25 acceptable to the commissioner.

1 (3) If a reinsurance intermediary-manager establishes
2 loss reserves, the reinsurer shall annually obtain the
3 opinion of an actuary attesting to the adequacy of loss
4 reserves established for losses incurred and outstanding on
5 business produced by the reinsurance intermediary-manager.
6 The opinion is in addition to any other required loss
7 reserve certification.

8 (4) Binding authority for all retrocessional contracts
9 or participation in reinsurance syndicates must rest with an
10 officer of the reinsurer who may not be affiliated with the
11 reinsurance intermediary-manager.

12 (5) Within 30 days of termination of a contract with a
13 reinsurance intermediary-manager, the reinsurer shall
14 provide written notification of the termination to the
15 commissioner.

16 (6) A reinsurer may not appoint to its board of
17 directors any officer, director, employee, controlling
18 shareholder, or subproducer of its reinsurance
19 intermediary-manager. This subsection does not apply to
20 relationships governed by Title 33, chapter 2, part 11, or,
21 if applicable, [sections 19 through 23].

22 **NEW SECTION. Section 26. Examination authority.** (1) A
23 reinsurance intermediary is subject to examination by the
24 commissioner. The commissioner must have access to all
25 books, bank accounts, and records of the reinsurance

intermediary in a form usable to the commissioner.

(2) A reinsurance intermediary-manager may be examined as if it were the reinsurer.

NEW SECTION. Section 27. Penalties and liabilities.

(1) (a) A reinsurance intermediary, insurer, or reinsurer found by the commissioner, after a hearing conducted in accordance with Title 33, chapter 1, part 7, to be in violation of any provision of [sections 19 through 26]:

(i) shall, for each separate violation, pay a penalty in an amount not to exceed \$5,000; and

(ii) is subject to revocation or suspension of its license.

(b) If a violation was committed by the reinsurance intermediary, the reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the violation.

(2) The order of the commissioner pursuant to subsection (1) is subject to judicial review pursuant to Title 33, chapter 1, part 7.

(3) This section does not limit the authority of the commissioner to impose any other penalties provided in the insurance law.

(4) [Sections 19 through 26] do not limit or restrict

the rights of policyholders, claimants, creditors, or other third parties or confer any rights upon those persons.

NEW SECTION. Section 28. Credit allowed domestic

ceding insurer. (1) Credit for reinsurance is allowed to a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection (2), (3), (4), (5), or (6). If the requirements of subsection (4) or (5) are met, the requirements of subsection (7) must also be met.

(2) Credit must be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this state.

(3) Credit must be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this state. Credit may not be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing. An accredited reinsurer is one that:

(a) files with the commissioner evidence of its submission to this state's jurisdiction;

(b) submits to this state's authority to examine its books and records;

(c) is licensed to transact insurance or reinsurance in at least one state or, in the case of a United States branch

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1 of an alien assuming insurer, is entered through and
2 licensed to transact insurance or reinsurance in at least
3 one state;

4 (d) files annually with the commissioner a copy of its
5 annual statement filed with the insurance department of its
6 state of domicile and a copy of its most recent audited
7 financial statement and either:

8 (i) maintains a surplus with regard to policyholders in
9 an amount that is not less than \$20 million and whose
10 accreditation has not been denied by the commissioner within
11 90 days of its submission; or

12 (ii) maintains a surplus with regard to policyholders in
13 an amount less than \$20 million and whose accreditation has
14 been approved by the commissioner.

15 (4) (a) Subject to subsection (4)(b), credit must be
16 allowed when:

17 (i) the reinsurance is ceded to an assuming insurer
18 that is domiciled and licensed in or, in the case of a
19 United States branch of an alien assuming insurer, is
20 entered through a state that employs standards regarding
21 credit for reinsurance substantially similar to those
22 applicable under this statute; and

23 (ii) the assuming insurer or the United States branch of
24 an alien assuming insurer:

25 (A) maintains a surplus with regard to policyholders in

1 an amount not less than \$20 million; and

2 (B) submits to the authority of this state to examine
3 its books and records.

4 (b) The requirement of subsection (4)(a)(i) does not
5 apply to reinsurance ceded and assumed pursuant to pooling
6 arrangements among insurers in the same holding company
7 system.

8 (5) (a) Credit must be allowed when the reinsurance is
9 ceded to an assuming insurer that maintains a trust fund in
10 a qualified United States financial institution for the
11 payment of the valid claims of its United States
12 policyholders and ceding insurers and their assigns and
13 successors in interest. The assuming insurer shall report
14 annually to the commissioner information substantially the
15 same as that required to be reported on the NAIC annual
16 statement form by licensed insurers to enable the
17 commissioner to determine the sufficiency of the trust fund.

18 (b) (i) In the case of a single assuming insurer, the
19 trust must consist of a trustee account representing the
20 assuming insurer's liabilities attributable to business
21 written in the United States, and in addition, the assuming
22 insurer shall maintain a surplus with the trustee of not
23 less than \$20 million.

24 (ii) In the case of a group of individual unincorporated
25 underwriters, the trust must consist of a trustee account

1 representing the group's liabilities attributable to
 2 business written in the United States, and in addition, the
 3 group shall maintain a surplus with the trustee of which
 4 \$100 million must held jointly for the benefit of United
 5 States ceding insurers of any member of the group. The group
 6 shall make available to the commissioner an annual
 7 certification of the solvency of each underwriter by the
 8 group's domiciliary regulator and its independent public
 9 accountants.

10 (iii) In the case of a group of incorporated insurers
 11 under common administration:

12 (A) the provisions of subsection (5)(b)(iii)(B) apply,
 13 to the group that:

14 (I) complies with the reporting requirements contained
 15 in subsection (5)(a);

16 (II) has continuously transacted an insurance business
 17 outside the United States for at least 3 years immediately
 18 prior to making application for accreditation;

19 (III) submits to this state's authority to examine its
 20 books and records and bears the expense of the examination;
 21 and

22 (IV) has aggregate policyholders' surplus of \$10
 23 billion;

24 (B) (I) the trust must be in an amount equal to the
 25 group's several liabilities attributable to business ceded

1 by United States ceding insurers to any member of the group
 2 pursuant to reinsurance contracts issued in the name of the
 3 group;

4 (II) the group shall maintain a joint surplus with a
 5 trustee of which \$100 million is held jointly for the
 6 benefit of United States ceding insurers of any member of
 7 the group as additional security for any liabilities; and

8 (III) each member of the group shall make available to
 9 the commissioner an annual certification of the member's
 10 solvency by the member's domiciliary regulator and its
 11 independent public accountant.

12 (c) The trust must be established in a form approved by
 13 the commissioner. The trust instrument must provide that
 14 contested claims are valid and enforceable upon the final
 15 order of any court of competent jurisdiction in the United
 16 States. The trust must vest legal title to its assets in the
 17 trustees of the trust for its United States policyholders
 18 and ceding insurers and their assigns and successors in
 19 interest. The trust and the assuming insurer are subject to
 20 examination as determined by the commissioner. The trust
 21 described in this subsection (c) must remain in effect for
 22 as long as the assuming insurer has outstanding obligations
 23 due under the reinsurance agreements subject to the trust.

24 (d) No later than February 28 of each year, the
 25 trustees of the trust shall report to the commissioner in

1 writing setting forth the balance of the trust and listing
 2 the trust's investments at the end of the preceding year.
 3 The trustees shall certify the date of termination of the
 4 trust, if planned, or certify that the trust may not expire
 5 prior to the following December 31.

6 (6) Credit must be allowed when the reinsurance is
 7 ceded to an assuming insurer that does not meet the
 8 requirements of subsection (2), (3), (4), or (5) but only
 9 with respect to the insurance of risks located in a
 10 jurisdiction in which the reinsurance is required by
 11 applicable law or regulation of that jurisdiction.

12 (7) (a) If the assuming insurer is not licensed or
 13 accredited to transact insurance or reinsurance in this
 14 state, the credit permitted by subsections (4) and (5) may
 15 not be allowed unless the assuming insurer agrees in the
 16 reinsurance agreements:

17 (i) that in the event of the failure of the assuming
 18 insurer to perform its obligations under the terms of the
 19 reinsurance agreement, the assuming insurer, at the request
 20 of the ceding insurer, will:

21 (A) submit to the jurisdiction of any court of
 22 competent jurisdiction in any state of the United States;

23 (B) comply with all requirements necessary to give the
 24 court jurisdiction; and

25 (C) abide by the final decision of the court or of any

1 appellate court in the event of an appeal; and

2 (ii) to designate the commissioner or a designated
 3 attorney as its attorney upon whom may be served any lawful
 4 process in any action, suit, or proceeding instituted by or
 5 on behalf of the ceding company.

6 (b) Subsection (7)(a)(i) is not intended to conflict
 7 with or override the obligation of the parties to a
 8 reinsurance agreement to arbitrate their disputes if an
 9 obligation is created in the agreement.

10 **NEW SECTION. Section 29. Reduction of liability for**
 11 **reinsurance ceded by domestic insurer to assuming insurer. A**
 12 **reduction from liability for the reinsurance ceded by a**
 13 **domestic insurer to an assuming insurer not meeting the**
 14 **requirements of [section 28] must be allowed in an amount**
 15 **not exceeding the liabilities carried by the ceding insurer.**
 16 **The reduction must be in the amount of funds held by or on**
 17 **behalf of the ceding insurer, including funds held in trust**
 18 **for the ceding insurer:**

19 (1) under a reinsurance contract with the assuming
 20 insurer as security for the payment of obligations under the
 21 contract if the security is held in the United States
 22 subject to withdrawal solely by and under the exclusive
 23 control of the ceding insurer; or

24 (2) in the case of a trust, in a qualified United
 25 States financial institution. This security may be in the

form of:

(a) cash;

(b) securities listed by the securities valuation office of the NAIC and qualifying as admitted assets;

(c) clean, irrevocable, unconditional letters of credit that are issued or confirmed by a qualified United States financial institution no later than December 31 of the year for which filing is being made and that are in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation must, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever occurs first.

(d) any other form of security acceptable to the commissioner.

NEW SECTION. **Section 30.** Reinsurance agreements affected. [Sections 28 and 29] apply to all cessions after October 1, 1993, under reinsurance agreements that have had an inception, anniversary, or renewal date on or before April 1, 1993.

NEW SECTION. **Section 31.** Conduct of examinations --

records -- correction of accounts -- appraisals. (1) Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe the guidelines and procedures set forth in the examiners' handbook adopted by the NAIC. The commissioner may also employ other guidelines or procedures as the commissioner considers appropriate.

(2) Every company or person from whom information is sought and its officers, directors, employees, and agents shall provide to the examiners appointed under subsection (1) timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, and any or all computer or other recordings relating to the property, assets, business, and affairs of the company being examined. The officers, directors, employees, and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the examiners is grounds for suspension, refusal, or nonrenewal of any license or authority held by

the company to engage in an insurance or other business subject to the commissioner's jurisdiction. A proceeding for suspension, revocation, or refusal of any license or authority must be conducted pursuant to 33-1-318.

(3) The commissioner or any examiner has the power to issue subpoenas, administer oaths, and examine under oath any person concerning any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction and, upon proper showing, the court may enter an order compelling the witness to appear and testify or to produce documentary evidence. Failure to obey the court order is punishable as contempt of court.

(4) When making an examination under this part, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners. The cost of retaining the personnel must be borne by the company that is the subject of the examination.

(5) This part may not be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to this title. Findings of fact and conclusions made pursuant to an examination are prima facie evidence in any legal or regulatory action.

(6) This part may not be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action that the commissioner may consider appropriate.

NEW SECTION. **Section 32. Examination reports -- hearings -- confidentiality -- publication.** (1) All examination reports must be composed only of facts appearing upon the books, records, or other documents of the company, its agents, or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs. The report must contain the conclusions and recommendations that the examiners find reasonably warranted from the facts.

(2) No later than 60 days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice that gives the company examined a reasonable opportunity, but not more than 30 days, to make a written submission or rebuttal with respect to any matters contained

1 in the examination report.

2 (3) Within 30 days of the end of the period allowed for
3 the receipt of written submissions or rebuttals, the
4 commissioner shall fully consider and review the report,
5 together with any written submissions or rebuttals and any
6 relevant portions of the examiner's workpapers and enter an
7 order:

8 (a) adopting the examination report as filed or with
9 modification or corrections. If the examination report
10 reveals that the company is operating in violation of any
11 law, regulation, or prior order of the commissioner, the
12 commissioner may order the company to take any action the
13 commissioner considers necessary and appropriate to cure the
14 violation.

15 (b) rejecting the examination report with directions to
16 the examiners to reopen the examination for purposes of
17 obtaining additional data, documentation, information, or
18 testimony and of refiling pursuant to subsection (2); or

19 (c) calling for an investigatory hearing with no less
20 than 20 days' notice to the company for purposes of
21 obtaining additional data, documentation, information, and
22 testimony.

23 (4) (a) All orders entered pursuant to subsection
24 (3)(a) must be accompanied by findings and conclusions
25 resulting from the commissioner's consideration and review

1 of the examination report, relevant examiner workpapers, and
2 any written submissions or rebuttals. An order must be
3 considered a final administrative decision and may be
4 appealed pursuant to Title 33, chapter 1, part 7, and must
5 be served upon the company by certified mail, together with
6 a copy of the adopted examination report. Within 30 days of
7 the issuance of the adopted report, the company shall file
8 affidavits executed by each of its directors stating under
9 oath that they have received a copy of the adopted report
10 and related orders.

11 (b) (i) A hearing conducted under subsection (3)(c) by
12 the commissioner or an authorized representative must be
13 conducted as a nonadversarial, confidential, investigatory
14 proceeding as necessary for the resolution of any
15 inconsistencies, discrepancies, or disputed issues apparent
16 upon the face of the filed examination report or raised by
17 or as a result of the commissioner's review of relevant
18 workpapers or by the written submission or rebuttal of the
19 company. Within 20 days of the conclusion of the hearing,
20 the commissioner shall enter an order pursuant to subsection
21 (3)(a).

22 (ii) The commissioner may not appoint an examiner as an
23 authorized representative to conduct the hearing. The
24 hearing must proceed expeditiously with discovery by the
25 company limited to the examiner's workpapers that tend to

1 substantiate any assertions set forth in any written
2 submission or rebuttal. The commissioner or the
3 commissioner's representative may issue subpoenas for the
4 attendance of any witnesses or the production of any
5 documents considered relevant to the investigation, whether
6 under the control of the department, the company, or other
7 persons. The documents produced must be included in the
8 record, and testimony taken by the commissioner or the
9 commissioner's representative must be under oath and
10 preserved for the record. This section does not require the
11 department to disclose any information or records that would
12 indicate or show the existence or content of any
13 investigation or activity of a criminal justice agency.

14 (iii) The hearing must proceed with the commissioner or
15 the commissioner's representative posing questions to the
16 persons subpoenaed. The company and the department may
17 present testimony relevant to the investigation.
18 Cross-examination must be conducted only by the commissioner
19 or the commissioner's representative. The company and the
20 department must be permitted to make closing statements and
21 may be represented by counsel of their choice.

22 (5) (a) Upon the adoption of the examination report
23 under subsection (3)(a), the commissioner shall continue to
24 hold the content of the examination report as private and
25 confidential information for a period of 30 days except to

1 the extent provided in subsection (2). After 30 days, the
2 commissioner may open the report for public inspection as
3 long as a court of competent jurisdiction has not stayed its
4 publication.

5 (b) This title does not prevent and may not be
6 construed as prohibiting the commissioner from disclosing
7 the content of an examination report or preliminary
8 examination report, the results of an examination, or any
9 matter relating to a report or results to the insurance
10 department of this state or of any other state or country,
11 to law enforcement officials of this state or of any other
12 state, or to an agency of the federal government at any time
13 as long as the agency or office receiving the report or
14 matters relating to the report agrees in writing to hold it
15 confidential and in a manner consistent with this part.

16 (c) If the commissioner determines that regulatory
17 action is appropriate as a result of any examination, the
18 commissioner may initiate any proceedings or actions as
19 provided by law.

20 (6) All working papers, recorded information,
21 documents, and copies produced by, obtained by, or disclosed
22 to the commissioner or any other person in the course of an
23 examination made under this part must be given confidential
24 treatment, are not subject to subpoena, and may not be made
25 public by the commissioner or any other person, except to

the extent provided in subsection (5). Access may also be granted to the NAIC. The persons given access shall agree in writing, prior to receiving the information, to treat the information in the confidential manner required by this section unless the prior written consent of the company to which it pertains has been obtained.

NEW SECTION. Section 33. Conflict of interest. (1) An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest with, is affiliated with the management of, or owns a pecuniary interest in any person subject to examination under this part. This section may not be construed to automatically preclude an examiner from being:

(a) a policyholder or claimant under an insurance policy;

(b) a grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;

(c) an investment owner in shares of regulated diversified investment companies; or

(d) a settlor or beneficiary of a blind trust into which any otherwise impermissible holdings have been placed.

(2) Notwithstanding the requirements of this section, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public

accountants, or other individuals who are independently practicing their professions, even though the persons may from time to time be similarly employed or retained by persons subject to examination under this part.

NEW SECTION. Section 34. Taxation of purchasing group.

Premium taxes and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any members of the purchasing group must be:

(1) imposed at the same rate and subject to the same interest, fines, and penalties as those applicable to premium taxes and taxes on premiums paid to surplus lines insurers and authorized insurers, pursuant to 33-2-311 and 33-2-705, respectively; and

(2) paid by the authorized or surplus lines insurers and, if not paid by them, paid by the insurance producer for the purchasing group and, if not paid by the insurance producer, paid by the purchasing group and, if not paid by the purchasing group, paid by each of its members.

NEW SECTION. Section 35. Condition on release from delinquency proceedings. An insurer that is subject to any delinquency proceeding, whether formal, informal, administrative, or judicial, may not:

(1) be released from the proceeding, unless the proceeding is converted to a judicial rehabilitation or liquidation proceeding;

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(2) be permitted to solicit or accept new business or request or accept the restoration of any suspended or revoked license or certificate of authority;

(3) be returned to the control of its shareholders or private management; or

(4) have any of its assets returned to the control of its shareholders or private management until all payments of or on account of the insurer's contractual obligations by all guaranty associations, along with all expenses of the guaranty associations and interest on all payments and expenses, have been repaid to the guaranty associations or a plan of repayment by the insurer has been approved by the guaranty association.

NEW SECTION. Section 36. Indemnification of rehabilitator, liquidator, and employees -- persons covered.

(1) The persons entitled to protection under [sections 37 and 38] are:

(a) all rehabilitators and liquidators responsible for the conduct of a delinquency proceeding under Title 33, chapter 2, including present and former rehabilitators and liquidators; and

(b) the employees of the rehabilitators and liquidators, including all present and former special deputies and assistant special deputies appointed by the commissioner, and all persons whom the commissioner, special

deputies, or assistant special deputies have employed to assist in a delinquency proceeding under Title 33, chapter 2.

(2) Attorneys, accountants, auditors, and other professional persons or firms, who are retained by the rehabilitator or liquidator as independent contractors, and their employees are not considered employees of the rehabilitator or liquidator for purposes of any cause of action initiated by the rehabilitator or liquidator against the independent contractor in the name of the rehabilitation or liquidation estate.

NEW SECTION. Section 37. Indemnification of rehabilitator, liquidator, and employees. (1) If any legal action is commenced against the rehabilitator or liquidator or any employee of the rehabilitator or liquidator, whether against the rehabilitator, liquidator, or employee personally or in an official capacity, alleging property damage, property loss, personal injury, or other civil liability caused by or resulting from any alleged act, error, or omission of the rehabilitator, liquidator, or employee arising out of or by reason of duties or employment, the rehabilitator, liquidator, or employee is indemnified from the assets of the insurer for all expenses, attorney fees, judgments, settlements, decrees, surety bond premiums, or amounts due and owing or paid in satisfaction

of or incurred in the defense of the legal action unless it is determined upon a final adjudication on the merits that the alleged act, error, or omission of the rehabilitator, liquidator, or employee that gave rise to the claim did not arise out of or by reason of the rehabilitator's, liquidator's, or employee's duties or employment or was caused by intentional or willful and wanton misconduct.

(2) Attorney fees and related expenses incurred in defending a legal action for which indemnity is available under this section must be paid from the assets of the insurer, as the expenses are incurred and in advance of the final disposition of the action, upon receipt of an undertaking by or on behalf of the rehabilitator, liquidator, or employee to repay the attorney fees and expenses. If, upon a final adjudication on the merits, it is determined that the rehabilitator, liquidator, or employee is not entitled to indemnity under this section, the payment must be made from the undertaking.

(3) An indemnification for expenses, attorney fees, judgments, settlements, decrees, surety bond premiums, or other amounts paid or to be paid from the insurer's assets pursuant to this section are an administrative expense of the insurer.

(4) If actual or threatened litigation against a rehabilitator, liquidator, or employee for which indemnity

may be available under this section occurs, a reasonable amount of funds that in the judgment of the commissioner may be needed to provide indemnity must be segregated and reserved from the assets of the insurer as security for the payment of indemnity until all applicable statutes of limitation have run, all actual or threatened actions against the rehabilitator, liquidator, or employee have been completely and finally resolved, and all obligations of the insurer and the commissioner under this section have been satisfied.

(5) In lieu of segregation and reservation of funds, the commissioner may obtain a surety bond or make other arrangements that will enable the commissioner to fully secure the payment of all obligations under this section.

NEW SECTION. Section 38. Settlement of actions against rehabilitator, liquidator, and employees -- court approval -- applicability. (1) If any legal action against an employee for which indemnity may be available under this section is settled prior to final adjudication on the merits, the insurer shall pay the settlement amount on behalf of the employee or indemnify the employee for the settlement amount unless the commissioner determines:

(a) that the claim did not arise out of or by reason of the employee's duties or employment; or

(b) that the claim was caused by the intentional or

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willful and wanton misconduct of the employee.

(2) In a legal action in which the rehabilitator or liquidator is a defendant, that portion of any settlement relating to the alleged act, error, or omission of the rehabilitator or liquidator is subject to the approval of the court before which the delinquency proceeding is pending. The court may not approve that portion of the settlement if it determines:

(a) that the claim did not arise out of or by reason of the rehabilitator's or liquidator's duties or employment; or

(b) that the claim was caused by the intentional or willful and wanton misconduct of the rehabilitator or liquidator.

(3) This section may not be construed to deprive the rehabilitator, liquidator, or employee of immunity, indemnity, benefit of law, right, or defense available under any provision of law, including, without limitation, the provisions of Title 2, chapter 9.

(4) (a) A legal action does not lie against the rehabilitator, liquidator, or employee based in whole or in part on any alleged act, error, or omission that took place prior to October 1, 1993, unless suit is filed and valid service of process is obtained by October 1, 1994.

(b) Subsections (1) through (3) apply to any suit that is pending on or filed after October 1, 1993, without regard

to when the alleged act, error, or omission took place.

Section 39. Section 33-1-401, MCA, is amended to read:

"33-1-401. Examination of insurers. (1) The commissioner shall examine the affairs, transactions, accounts, records, and assets of each authorized insurer as often as he deems the commissioner considers advisable. He The commissioner shall so examine each domestic authorized insurer not less frequently than every 3 5 years.

~~Examination of an alien insurer may be limited to its insurance transactions and affairs in the United States. Examination of a reciprocal insurer may also include examination of its attorney in fact insofar as the transactions of the attorney in fact relate to the insurer.~~

(2) The commissioner shall in like manner examine each insurer applying for an initial certificate of authority to do business in this state.

(3) In lieu of making ~~his own~~ an examination under this part of any foreign or alien insurer licensed in this state, the commissioner may, ~~in his discretion,~~ accept a ~~full~~ an examination report ~~of the last recent examination of a foreign or alien insurer, certified to on the company prepared by the insurance supervisory official department of another for the company's state, territory, commonwealth, or district of the United States domicile or port of entry state until January 1, 1994. After January 1, 1994, the~~

1 reports may only be accepted if:

2 (a) the insurance department was at the time of the
3 examination accredited under the national association of
4 insurance commissioners' financial regulation standards and
5 accreditation program; or

6 (b) the examination is performed under the supervision
7 of an accredited state insurance department or with the
8 participation of one or more examiners who are employed by
9 such an accredited state insurance department and who, after
10 a review of the examination work papers and report, state
11 under oath that the examination was performed in a manner
12 consistent with the standards and procedures required by
13 their insurance department.

14 (4) For purposes of completing an examination of any
15 company under this part, the commissioner may examine or
16 investigate any person or the business of any person, in so
17 far as the examination or investigation is, in the sole
18 discretion of the commissioner, necessary or material to the
19 examination of the company."

20 **Section 40.** Section 33-2-501, MCA, is amended to read:

21 **"33-2-501. Assets allowed.** In any determination of the
22 financial condition of an insurer, there ~~shall~~ must be
23 allowed as assets only such assets as that are owned by the
24 insurer and which that consist of:

25 (1) cash in the possession of the insurer or in transit

1 under its control and including the true balance of any
2 deposit in a solvent bank or trust company;

3 (2) investments, securities, properties, and loans
4 acquired or held in accordance with this code and in
5 connection therewith the following items:

6 (a) interest due or accrued on any bond or evidence of
7 indebtedness which is not in default and which is not valued
8 on a basis including accrued interest;

9 (b) declared and unpaid dividends on stock and shares
10 unless such the amount has otherwise been allowed as an
11 asset;

12 (c) interest due or accrued upon a collateral loan in
13 an amount not to exceed 1 year's interest thereon on the
14 loan;

15 (d) interest due or accrued on deposits in solvent
16 banks and trust companies and interest due or accrued on
17 other assets, if such the interest is in the judgment of the
18 commissioner a collectible asset;

19 (e) interest due or accrued on a mortgage loan in an
20 amount not exceeding in any event the amount, if any, of the
21 excess of the value of the property less delinquent taxes
22 thereon on the property over the unpaid principal. ~~In no~~
23 ~~event-shall-interest~~ Interest accrued for a period in excess
24 of 18 months may not be allowed as an asset.

25 (f) rent due or accrued on real property if such the

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rent is not in arrears for more than 3 months and rent more than 3 months in arrears if the payment of ~~such~~ the rent ~~be~~ is adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral;

(g) the unaccrued portion of taxes paid prior to the due date on real property;

(3) premium notes, policy loans, and other policy assets and liens on policies and certificates of life insurance and annuity contracts and accrued interest ~~thereon~~, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy;

(4) the net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer;

(5) premiums in the course of collection, other than for life insurance, not more than 3 months past due, less commissions payable ~~thereon~~ on the premiums. The foregoing limitation ~~shall~~ in this subsection does not apply to premiums payable directly or indirectly by the United States government or by any of its instrumentalities.

(6) installment premiums other than life insurance premiums to the extent of the unearned premium reserve carried on the policy to which premiums apply;

(7) notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on ~~such~~ that basis, to the

extent of the unearned premium reserves carried ~~thereon~~ on the policies;

(8) the full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under 33-2-~~1205~~ chapter 2, part 12;

(9) amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty;

(10) deposits or equities recoverable from underwriting associations, syndicates, and reinsurance funds or from any suspended banking institution, to the extent ~~deemed~~ considered by the commissioner available for the payment of losses and claims and at values to be determined by ~~him~~ the commissioner;

(11) electronic data processing equipment if the cost of ~~such the~~ equipment is at least \$100,000, which cost ~~shall~~ must be amortized in full over a period of not to exceed 10 calendar years. However, with regard to life insurers, ~~such the~~ equipment ~~shall~~ must be allowed as an asset if the cost of ~~such the~~ equipment is at least \$25,000, which cost ~~shall~~ must be amortized in full over a period of not to exceed 5 calendar years, and the amount of ~~such the~~ asset allowed may not exceed 1% of the total of the other allowable assets of the insurer.

(12) all assets, whether or not consistent with the provisions of this section, as may be allowed pursuant to the annual statement form approved by the commissioner for the kinds of insurance to be reported upon therein in the annual statement;

(13) other assets, not inconsistent with the provisions of this section, deemed considered by the commissioner to be available for the payment of losses and claims, at values to be determined by him the commissioner."

Section 41. Section 33-2-532, MCA, is amended to read:

"33-2-532. Valuation of bonds. (1) (a) All bonds or other evidences of debt having a fixed term and rate of interest held by an insurer may, if amply secured and not in default as to principal or interest, be valued as follows:

(i) if purchased at par, at the par value;

(ii) if purchased above or below par, on the basis of the purchase price adjusted ~~so-as~~ to bring the value to par at maturity and ~~so-as~~ to yield in the meantime the effective rate of interest at which the purchase was made, or, in lieu of ~~such this~~ method, according to ~~such an~~ accepted method of valuation as is approved by the commissioner by rule.

(b) Purchase price ~~shall-in-no-case may not~~ be taken at a higher figure than the actual market value at the time of purchase, plus actual brokerage, transfer, postage, or express charges paid in the acquisition of ~~such the~~

securities.

(c) Unless otherwise provided by valuation established or approved by the commissioner, ~~no-such a~~ security ~~shall~~ may not be carried at above the call price for the entire issue during any period within which the security may be so called.

(2) The commissioner ~~shall-have~~ has full discretion in determining the method of calculating values according to the rules set forth in this section."

Section 42. Section 33-2-533, MCA, is amended to read:

"33-2-533. Valuation of other securities. (1) Securities, other than those referred to in 33-2-532, held by an insurer ~~shall~~ must be valued, in the discretion of the commissioner, at their market value, at their appraised value, or at prices determined by ~~him the commissioner~~ as representing their fair market value as established by rule.

(2) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the commissioner and in accordance with ~~such the~~ method of computation ~~as-he~~ that the commissioner may approve."

Section 43. Section 33-2-701, MCA, is amended to read:

"33-2-701. Annual statement -- revocation or fine for failure to file -- penalty for perjury. (1) Each authorized insurer shall annually on or before March 1 file with the

1 commissioner a full and true statement of its financial
 2 condition, transactions, and affairs as of the December 31
 3 preceding. The statement ~~shall~~ must be in ~~such~~ the general
 4 form and context as is required or not disapproved by the
 5 commissioner, as is in current use for similar reports to
 6 states in general with respect to the type of insurer and
 7 kinds of insurance to be reported upon, and as supplemented
 8 for additional information required by the commissioner. THE
 9 STATEMENT MUST BE COMPLETED IN ACCORDANCE WITH THE ANNUAL
 10 STATEMENT INSTRUCTIONS AND THE ACCOUNTING PRACTICES AND
 11 PROCEDURES MANUAL OF THE NATIONAL ASSOCIATION OF INSURANCE
 12 COMMISSIONERS. THE STATEMENT MUST BE ACCOMPANIED BY AN
 13 ACTUARIAL OPINION ATTESTING TO THE ADEQUACY OF THE INSURER'S
 14 RESERVES. The statement ~~shall~~ must be verified by the oath
 15 of the insurer's president or vice-president and secretary
 16 or, if a reciprocal insurer, by the oath of the
 17 attorney-in-fact or its like officers if a corporation. The
 18 commissioner may~~,-in-his--discretion,~~ waive any~~--such~~ the
 19 verification under oath.

20 (2) The statement of an alien insurer ~~shall~~ must relate
 21 only to its transactions and affairs in the United States
 22 unless the commissioner requires otherwise. If the
 23 commissioner requires a statement as to an alien insurer's
 24 affairs throughout the world, the insurer shall file such
 25 the statement with the commissioner as soon as reasonably

1 possible. The statement ~~shall~~ must be verified by the
 2 insurer's United States manager or other authorized officer
 3 duly-authorized.

4 (3) The commissioner may refuse to accept the fee for
 5 continuance of the insurer's certificate of authority, as
 6 provided in 33-2-117, or may ~~in-his--discretion~~ suspend or
 7 revoke the certificate of authority of any insurer failing
 8 to file its annual statement when due or within an extension
 9 of time that the commissioner may grant.

10 (4) Any director, officer or insurance producer, or
 11 employee of any company who subscribes to, makes, or concurs
 12 in making or publishing any annual statement or any other
 13 statement required by law knowing the same to contain any
 14 material statement which is false shall be punished by a
 15 fine of not more than \$1,000.

16 (5) At time of filing, the insurer shall pay to the
 17 commissioner the fee for filing its statement as prescribed
 18 in 33-2-708.

19 (6) The commissioner may impose a fine not to exceed
 20 \$100 a day for each day after March 1 that an insurer fails
 21 to file the annual statement referred to in subsection (1).
 22 Such The fine may not exceed a maximum of \$1,000."

23 **Section 44.** Section 33-2-708, MCA, is amended to read:

24 **"33-2-708. Fees and licenses.** (1) Except as provided in
 25 33-17-212(2), the commissioner shall collect in advance and

1 the persons served shall pay to the commissioner the
2 following fees:

3 (a) certificates of authority:

4 (i) for filing applications for original certificates
5 of authority, articles of incorporation (except original
6 articles of incorporation of domestic insurers as provided
7 in subsection (1)(b)) and other charter documents, bylaws,
8 financial statement, examination report, power of attorney
9 to the commissioner, and all other documents and filings
10 required in connection with the application and for issuance
11 of an original certificate of authority, if issued:

12 (A) domestic insurers \$ 600.00

13 (B) foreign insurers 600.00

14 (ii) annual continuation of certificate of authority
15 600.00

16 (iii) reinstatement of certificate of authority
17 25.00

18 (iv) amendment of certificate of authority 50.00

19 (b) articles of incorporation:

20 (i) filing original articles of incorporation of a
21 domestic insurer, exclusive of fees required to be paid by
22 the corporation to the secretary of state 20.00

23 (ii) filing amendment of articles of incorporation,
24 domestic and foreign insurers, exclusive of fees required to
25 be paid to the secretary of state by a domestic corporation

1 25.00

2 (c) filing bylaws or amendment to bylaws where
3 required 10.00

4 (d) filing annual statement of insurer, other than as
5 part of application for original certificate of authority
6 25.00

7 (e) insurance producer's license:

8 (i) application for original license, including
9 issuance of license, if issued 15.00

10 (ii) appointment of insurance producer, each insurer
11 10.00

12 (iii) temporary license 15.00

13 (iv) amendment of license (excluding additions to
14 license) or reissuance of master license 15.00

15 (f) nonresident insurance producer's license:

16 (i) application for original license, including
17 issuance of license, if issued 100.00

18 (ii) appointment of insurance producer, each insurer
19 10.00

20 (iii) annual renewal of license 10.00

21 (iv) amendment of license (excluding additions to
22 license) or reissuance of master license 15.00

23 (g) examination, if administered by the commissioner,
24 for license as insurance producer, each examination
25 15.00

1 (h) surplus lines insurance producer license:
 2 (i) application for original license and for issuance
 3 of license, if issued 50.00
 4 (ii) annual renewal of license 50.00
 5 (i) adjuster's license:
 6 (i) application for original license and for issuance
 7 of license, if issued 15.00
 8 (ii) annual renewal of license 15.00
 9 (j) insurance vending machine license, each machine,
 10 each year 10.00
 11 (k) commissioner's certificate under seal (except when
 12 on certificates of authority or licenses) 10.00
 13 (l) copies of documents on file in the commissioner's
 14 office, per page50
 15 (m) policy forms:
 16 (i) filing each policy form 25.00
 17 (ii) filing each application, rider, endorsement,
 18 amendment, insert page, schedule of rates, and clarification
 19 of risks 10.00
 20 (iii) maximum charge if policy and all forms submitted
 21 at one time or resubmitted for approval within 180 days
 22 100.00
 23 (n) applications for approval of prelicensing education
 24 courses:
 25 (i) reviewing initial application 150.00

1 (ii) periodic review 50.00
 2 (2) The commissioner shall establish by rule an annual
 3 accreditation fee to be paid by each domestic and foreign
 4 insurer when it submits a fee for annual continuation of its
 5 certificate of authority.
 6 ~~†2~~(3) (a) The Except as provided in subsection (3)(b),
 7 the commissioner shall promptly deposit with the state
 8 treasurer to the credit of the general fund of this state
 9 all fines and penalties, those amounts received pursuant to
 10 33-2-311, 33-2-705, and 33-2-706, and any fees and
 11 examination and miscellaneous charges that are collected by
 12 him the commissioner pursuant to Title 33 and the rules
 13 adopted under Title 33.
 14 (b) The accreditation fee required by subsection (2)
 15 must be turned over promptly to the state treasurer who
 16 shall deposit the money in the state special revenue fund to
 17 the credit of the commissioner's office. The accreditation
 18 fee funds must be used only to pay the expenses of the
 19 commissioner's office in discharging its THE administrative
 20 and regulatory duties THAT ARE REQUIRED TO MEET THE MINIMUM
 21 FINANCIAL REGULATORY STANDARDS ESTABLISHED BY THE NATIONAL
 22 ASSOCIATION OF INSURANCE COMMISSIONERS, subject to the
 23 applicable laws relating to the appropriation of state funds
 24 and to the deposit and expenditure of money. The
 25 commissioner is responsible for the proper expenditure of

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1 the accreditation money.

2 {3}(4) All fees are considered fully earned when
3 received. In the event of overpayment, only those amounts in
4 excess of \$10 will be refunded."

5 **Section 45.** Section 33-2-1111, MCA, is amended to read:

6 "33-2-1111. Registration of insurers -- requisites --
7 termination. (1) Every insurer which is authorized to do
8 business in this state and which is a member of an insurance
9 holding company system shall register with the commissioner,
10 except a foreign insurer subject to disclosure requirements
11 and standards adopted by statute or regulation in the
12 jurisdiction of its domicile which are substantially similar
13 to those contained in this section. Any insurer which is
14 subject to registration under this section shall register
15 within ~~60 days after July 17, 1971~~ or 15 days after it
16 becomes subject to registration, ~~whichever is later~~, unless
17 the commissioner for good cause shown extends the time for
18 registration, and then within such the extended time. The
19 commissioner may require any authorized insurer which is a
20 member of a holding company system which is not subject to
21 registration under this section to furnish a copy of the
22 registration statement or other information filed by such
23 the insurance company with the insurance regulatory
24 authority of domiciliary jurisdiction.

25 (2) Every insurer subject to registration shall file

1 with the commissioner, on or before April 30 each year, a
2 registration statement on a form provided by the
3 commissioner, which must contain current information about:

4 (a) the capital structure, general financial condition,
5 ownership, and management of the insurer and any person
6 controlling the insurer;

7 (b) the identity of every member of the insurance
8 holding company system;

9 (c) the following agreements in force, relationships
10 subsisting, and transactions currently outstanding between
11 such the insurer and its affiliates:

12 (i) loans, other investments, or purchases, sales, or
13 exchanges of securities of the affiliates by the insurer or
14 of the insurer by its affiliates;

15 (ii) purchases, sales, or exchanges of assets;

16 (iii) transactions not in the ordinary course of
17 business;

18 (iv) guaranties or undertakings for the benefit of an
19 affiliate which result in an actual contingent exposure of
20 the insurer's assets to liability, other than insurance
21 contracts entered into in the ordinary course of the
22 insurer's business;

23 (v) all management and service contracts and all
24 cost-sharing arrangements, other than cost allocation
25 arrangements based upon generally accepted accounting

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1 principles;

2 (vi) reinsurance agreements covering all or
3 substantially all of one or more lines of insurance of the
4 ceding company;

5 (vii) dividends and other distributions to shareholders;
6 and

7 (viii) consolidated tax allocation agreements;

8 (d) any pledge of the insurer's stock, including stock
9 of a subsidiary or controlling affiliate for a loan made to
10 a member of the insurance holding company system;

11 (e) all matters concerning transactions between
12 registered insurers and any affiliates as may be included
13 from time to time in any registration forms adopted or
14 approved by the commissioner.

15 (3) A registration statement must contain a summary
16 outlining each item in the current registration statement
17 that represents a change from the prior registration
18 statement.

19 (4) ~~No-information~~ Information need not be disclosed on
20 the registration statement filed pursuant to subsection (2)
21 if ~~such~~ the information is not material for the purposes of
22 this section. Unless the commissioner by rule or order
23 provides otherwise, sales, purchases, exchanges, loans or
24 extensions of credit, or investments involving 1/2 of 1% or
25 less of an insurer's admitted assets as of December 31 next

1 preceding may ~~are not be-deemed~~ material for purposes of
2 this section.

3 (5) A person within an insurance holding company system
4 subject to registration shall provide complete and accurate
5 information to an insurer if the information is reasonably
6 necessary to enable the insurer to comply with Title 33,
7 chapter 2, part 11.

8 (6) Each registered insurer shall keep current the
9 information required to be disclosed in its registration
10 statement by reporting all material changes or additions on
11 amendment forms provided by the commissioner within 15 days
12 after the end of the month in which it learns of each such
13 change or addition. ~~Except-as-provided-in-33-2-11147-each~~
14 ~~registered-insurer-shall-report-all-dividends-and-other~~
15 ~~distributions---to---shareholders---within---2---business---days~~
16 ~~following-the-declaration-thereof-~~

17 (7) The commissioner shall terminate the registration
18 of any insurer which demonstrates that it no longer is a
19 member of an insurance holding company system.

20 (8) The commissioner may require or allow two or more
21 affiliated insurers subject to registration hereunder under
22 this section to file a consolidated registration statement
23 or consolidated reports amending their consolidated
24 registration statement or their individual registration
25 statements.

(9) The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) and to file all information and material required to be filed under this section."

Section 46. Section 33-2-1114, MCA, is amended to read:

"33-2-1114. Dividends and other distributions -- commissioner approval. (1) An insurer subject to registration under 33-2-1111 and 33-2-1112 may not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until 30 days after the commissioner has received notice of the declaration thereof of the dividend or distribution and has not within such the period disapproved such the payment or the commissioner shall--have has approved such payment within such the 30-day period.

(2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds 10% of such the insurer's surplus as regards policyholders as of December 31 next preceding, but shall may not include pro rata distributions of any class of the insurer's own securities.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such-a the declaration shall may not confer no rights upon shareholders until the commissioner has approved the payment of such the dividend or distribution or the commissioner has not disapproved such the payment within the 30-day period referred to above in subsection (1).

(4) An insurer subject to subsection (1) may not pay any other dividend or make any other distribution to its shareholders unless the insurer has notified the commissioner of the payment 15 days prior to the payment date. The notice must be kept confidential until the payment date of the dividend. The commissioner may order that a dividend not be paid if the commissioner finds that the insurer's surplus as regards policyholders, following the payment to shareholders, would be inadequate or could lead the insurer to a hazardous financial condition."

Section 47. Section 33-2-1115, MCA, is amended to read:

"33-2-1115. Examination. (1) ~~Subject-to-the-limitation contained-in-this-section-and-in~~ In addition to the powers which the commissioner has under chapter 1, part 4, relating to the examination of insurers, the commissioner shall also have has the power to order any insurer registered under

1 33-2-1111 to produce such the records, books, or other
 2 information papers in the possession of the insurer or its
 3 affiliates as ~~shall-be~~ are necessary to ascertain the
 4 financial condition or legality of conduct of such the
 5 insurer. ~~in--the--event-such~~ If the insurer fails to comply
 6 with such the order, the commissioner ~~shall-have--the--power~~
 7 to may examine such the affiliates to obtain such the
 8 information.

9 (2) ~~The commissioner shall--exercise--his--power--under~~
 10 ~~subsection--(1)--only--if--the--examination--of--the--insurer--is~~
 11 ~~inadequate--or--the--interests--of--the--policyholders--of--such~~
 12 ~~insurer--may--be--adversely--affected--~~

13 ~~{3}~~ The commissioner may retain at the registered
 14 insurer's expense such attorneys, actuaries, accountants,
 15 and other experts not otherwise a part of the commissioner's
 16 staff as ~~shall-be~~ are reasonably necessary to assist in the
 17 conduct of the examination under subsection (1). Any persons
 18 so retained ~~shall-be~~ are under the direction and control of
 19 the commissioner and shall act in a purely advisory
 20 capacity.

21 ~~{4}~~ (3) Each registered insurer producing for
 22 examination records, books, and papers pursuant to
 23 subsection (1) ~~shall--be~~ is liable for and shall pay the
 24 expense of such the examination."

25 NEW SECTION. **Section 48. Recovery of dividends.** (1) If

1 an order for liquidation or rehabilitation of an insurer
 2 domiciled in this state has been entered, the receiver
 3 appointed under the order has a right to recover on behalf
 4 of the insurer:

5 (a) from any parent corporation or holding company or
 6 person or affiliate who otherwise controlled the insurer,
 7 the amount of distributions, other than distributions of
 8 shares of the same class of stock, paid by the insurer on
 9 its capital stock; or

10 (b) any payment in the form of a bonus, termination
 11 settlement, or extraordinary lump-sum salary adjustment made
 12 by the insurer or its subsidiary to a director, officer, or
 13 employee, when the distribution or payment pursuant to
 14 subsection (1)(a) or this subsection is made at any time
 15 during the year preceding the petition for liquidation,
 16 conservation, or rehabilitation, as the case may be, subject
 17 to the limitations of subsections (2) through (4).

18 (2) A distribution is not recoverable if the parent or
 19 affiliate shows that when paid the distribution was lawful
 20 and reasonable and that the insurer did not know and could
 21 not reasonably have known that the distribution might
 22 adversely affect the ability of the insurer to fulfill its
 23 contractual obligations.

24 (3) Any person who was a parent corporation or holding
 25 company or a person who otherwise controlled the insurer or

1 affiliate at the time that the distributions were paid is
 2 liable up to the amount of distributions or payments that
 3 the person received. Any person who otherwise controlled the
 4 insurer at the time that the distributions were declared is
 5 liable up to the amount of distributions the person would
 6 have received if the person had been paid immediately. If
 7 two or more persons are liable with respect to the same
 8 distributions, they are jointly and severally liable.

9 (4) The maximum amount recoverable under this section
 10 is the amount needed in excess of all other available assets
 11 of the impaired or insolvent insurer to pay the contractual
 12 obligations of the impaired or insolvent insurer and to
 13 reimburse any guaranty funds.

14 (5) To the extent that any person liable under
 15 subsection (3) is insolvent or otherwise fails to pay claims
 16 due from it, its parent corporation or holding company or
 17 person who otherwise controlled it at the time the
 18 distribution was paid is jointly and severally liable for
 19 any resulting deficiency in the amount recovered from the
 20 parent corporation or holding company or person who
 21 otherwise controlled it.

22 **Section 49.** Section 33-2-1201, MCA, is amended to read:

23 "33-2-1201. **Limit of risk.** (1) No An insurer ~~shall~~ may
 24 not retain any risk on any one subject of insurance, whether
 25 located or to be performed in this state or elsewhere, in an

1 amount exceeding 10% of its surplus to policyholders.

2 (2) A "subject of insurance" for the purposes of this
 3 section, as to insurance against fire and hazards other than
 4 windstorm, earthquake, or other catastrophe hazards,
 5 includes all properties insured by the same insurer which
 6 are customarily considered by underwriters to be subject to
 7 loss or damage from the same fire or the same occurrence of
 8 such the other hazard insured against.

9 (3) Reinsurance ceded as authorized by 33-2-1205 ~~shall~~
 10 this part must be deducted in determining risk retained. As
 11 to surety risks, deduction ~~shall~~ must also be made of the
 12 amount assumed by any established incorporated cosurety and
 13 the value of any security deposited, pledged, or held
 14 subject to the surety's consent and for the surety's
 15 protection.

16 (4) As to alien insurers, this section ~~shall--relate~~
 17 only relates to risks and surplus to policyholders of the
 18 insurer's United States branch.

19 (5) "Surplus to policyholders" for the purposes of this
 20 section, in addition to the insurer's capital and surplus,
 21 ~~shall--be--deemed~~ is considered to include any voluntary
 22 reserves which are not required pursuant to law and ~~shall--be~~
 23 are determined from the last sworn statement of the insurer
 24 on file with the commissioner or by the last report of
 25 examination of the insurer, whichever is the more recent at

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1 time of assumption of risk.

2 (6) This section ~~shall~~ does not apply to life or
3 disability insurance, title insurance, insurance of wet
4 marine and transportation risks, workers' compensation
5 insurance, employer's liability coverages, sprinklered
6 risks, or any policy or type of coverage as to which the
7 maximum possible loss to the insurer is not readily
8 ascertainable on issuance of the policy."

9 **Section 50.** Section 33-2-1331, MCA, is amended to read:

10 "33-2-1331. Grounds for rehabilitation. The
11 commissioner may apply by petition to a district court for
12 an order authorizing him the commissioner to rehabilitate a
13 domestic insurer or an alien insurer domiciled in this state
14 on any one or more of the following grounds:

15 (1) The insurer is in such condition that the further
16 transaction of business would be financially hazardous to
17 its policyholders, creditors, or the public.

18 (2) There is reasonable cause to believe that there has
19 been embezzlement from the insurer, wrongful sequestration
20 or diversion of the insurer's assets, forgery or fraud
21 affecting the insurer, or other illegal conduct in, by, or
22 with respect to the insurer that if established would
23 endanger assets in an amount threatening the solvency of the
24 insurer.

25 (3) The insurer has failed to remove any person who in

1 fact has executive authority in the insurer, whether an
2 officer, manager, general insurance producer, employee, or
3 other person, if the person has been found after notice and
4 hearing by the commissioner to be dishonest or untrustworthy
5 in a way affecting the insurer's business.

6 (4) Control of the insurer, whether by stock ownership
7 or otherwise and whether direct or indirect, is in a person
8 found after notice and hearing to be untrustworthy.

9 (5) Any person who in fact has executive authority in
10 the insurer, whether an officer, manager, general insurance
11 producer, director or trustee, employee, or other person,
12 has refused to be examined under oath by the commissioner
13 concerning its affairs, whether in this state or elsewhere,
14 and after reasonable notice of the fact the insurer has
15 failed promptly and effectively to terminate the employment
16 and status of the person and ~~his~~ the person's influence on
17 management.

18 (6) After demand by the commissioner under 33-1-403
19 [section 31] or under this part, the insurer has failed to
20 promptly make available for examination any of its own
21 property, books, accounts, documents, or other records or
22 those of any subsidiary or related company within the
23 control of the insurer or those of any person having
24 executive authority in the insurer so far as they pertain to
25 the insurer.

(7) Without first obtaining the written consent of the commissioner, the insurer has transferred or attempted to transfer, in a manner contrary to chapter 2, part 11, or chapter 2, part 12, of Title 33, substantially its entire property or business or has entered into any transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.

(8) The insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, or sequestrator or similar fiduciary of the insurer or its property otherwise than as authorized under the insurance laws of this state, and such the appointment has been made or is imminent, and such the appointment might oust the courts of this state of jurisdiction or might prejudice orderly delinquency proceedings under this part.

(9) Within the previous 4 years the insurer has willfully violated its charter or articles of incorporation, its bylaws, any insurance law of this state, or any valid order of the commissioner under 33-2-1321.

(10) The insurer has failed to pay within 60 days after the due date any obligation to any state or any subdivision thereof of the state or any judgment entered in any state, if the court in which such the judgment was entered had

jurisdiction over such the subject matter, except that such nonpayment ~~shall~~ may not be a ground until 60 days after any good faith effort by the insurer to contest the obligation has been terminated, whether it is before the commissioner or in the courts, or the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors on the ground that it is financially unable to pay its obligations in full.

(11) The insurer has failed to file its annual report or other financial report required by statute within the time allowed by law and, after written demand by the commissioner, has failed to give an adequate explanation immediately.

(12) The board of directors or the holders of a majority of the shares entitled to vote request or consent to rehabilitation under this part."

Section 51. Section 33-2-1342, MCA, is amended to read:

"33-2-1342. Liquidation orders. (1) An order to liquidate the business of a domestic insurer ~~shall~~ must appoint the commissioner and ~~his~~ the commissioner's successors in office liquidator and shall direct the liquidator ~~forthwith~~ to take possession of the assets of the insurer and to administer them under the general supervision of the court. The liquidator shall be vested by operation of law with the title to all of the property, contracts, and

1 rights of action and all of the books and records of the
 2 insurer ordered liquidated, wherever located, as of the
 3 entry of the final order of liquidation. The filing or
 4 recording of the order with the clerk of the district court
 5 and the clerk and recorder of the county in which its
 6 principal office or place of business is located or, in the
 7 case of real estate, with the clerk and recorder of the
 8 county where the property is located shall impart the same
 9 notice as a deed, bill of sale, or other evidence of title
 10 duly filed or recorded with that clerk and recorder would
 11 have imparted.

12 (2) Upon issuance of the order, the rights and
 13 liabilities of any ~~such~~ insurer and of its creditors,
 14 policyholders, shareholders, members, and all other persons
 15 interested in its estate ~~shall~~ become fixed as of the date
 16 of entry of the order of liquidation, except as provided in
 17 33-2-1343 and 33-2-1366.

18 (3) An order to liquidate the business of an alien
 19 insurer domiciled in this state ~~shall~~ must be in the same
 20 terms and have the same legal effect as an order to
 21 liquidate a domestic insurer, except that the assets and the
 22 business in the United States ~~shall-be~~ are the only assets
 23 and business included ~~therein~~ in the order.

24 (4) At the time of petitioning for an order of
 25 liquidation or at any time thereafter after petitioning, the

1 commissioner, after making appropriate findings of an
 2 insurer's insolvency, may petition the court for a judicial
 3 declaration of ~~such~~ insolvency. After providing ~~such~~ notice
 4 and hearing as it considers proper, the court may make the
 5 declaration.

6 (5) Any order issued under this section ~~shall~~ must
 7 require accounting to the court by the liquidator.
 8 Accountings ~~shall~~ must be at ~~such~~ intervals as the court
 9 specifies in its order.

10 (6) (a) Within 5 days after the initiation of an appeal
 11 of an order of liquidation that has not been stayed, the
 12 commissioner shall present for the court's approval a plan
 13 for the continued performance of the defendant company's
 14 policy claims obligations, including the duty to defend
 15 insureds under liability insurance policies, during the
 16 pendency of an appeal. The plan must provide for the
 17 continued performance and payment of policy claims
 18 obligations in the normal course of events, notwithstanding
 19 the grounds alleged in support of the order of liquidation,
 20 including the ground of insolvency. In the event that the
 21 defendant company's financial condition will not, in the
 22 judgment of the commissioner, support the full performance
 23 of all policy claims obligations during the appeal pendency
 24 period, the plan may prefer the claims of certain
 25 policyholders and claimants over creditors and interested

1 parties, as well as other policyholders and claimants, as
 2 the commissioner finds to be fair and equitable, considering
 3 the relative circumstances of the policyholders and
 4 claimants. The court shall examine the plan submitted by the
 5 commissioner, and if it finds the plan to be in the best
 6 interests of the parties, the court shall approve the plan.
 7 An action does not lie against the commissioner or any of
 8 the commissioner's deputies, agents, clerks, assistants, or
 9 attorneys by any party based on preference in an appeal
 10 pendency plan approved by the court.

11 (b) The appeal pendency plan may not supersede or
 12 affect the obligations of any insurance guaranty
 13 association.

14 (c) A plan must provide for equitable adjustments to be
 15 made by the liquidator to any distributions of assets to
 16 guaranty associations, in the event that the liquidator pays
 17 claims from assets of the estate, which would otherwise be
 18 the obligations of any particular guaranty association but
 19 for the appeal of the order of liquidation, so that all
 20 guaranty associations equally benefit on a pro rata basis
 21 from the assets of the estate. If an order of liquidation is
 22 set aside upon any appeal, the company may not be released
 23 from delinquency proceedings unless all funds advanced by
 24 any guaranty association, including reasonable
 25 administrative expenses that relate to obligations of the

1 company, have been repaid in full, together with interest at
 2 the judgment rate of interest, or unless an arrangement for
 3 repayment has been made with the consent of all applicable
 4 guaranty associations."

5 **Section 52.** Section 33-2-1346, MCA, is amended to read:

6 **"33-2-1346. Notice to creditors and others.** (1) Unless
 7 the court otherwise directs, the liquidator shall give or
 8 cause to be given notice of the liquidation order as soon as
 9 possible:

10 (a) by first-class mail and either by telegram or
 11 telephone to the insurance commissioner of each jurisdiction
 12 in which the insurer is doing business;

13 (b) by first-class mail to any guaranty association or
 14 foreign guaranty association which is or may become
 15 obligated as a result of the liquidation;

16 (c) by first-class mail to all insurance producers of
 17 the insurer;

18 (d) by first-class mail to all persons known or
 19 reasonably expected to have claims against the insurer,
 20 including all policyholders, at their last-known address as
 21 indicated by the records of the insurer; and

22 (e) by publication in a newspaper of general
 23 circulation in the county in which the insurer has its
 24 principal place of business and in such other locations as
 25 that the liquidator considers appropriate.

(2) Notice to potential claimants under subsection (1) ~~shall-require~~ requires claimants to file with the liquidator their claims together with proper proofs ~~thereof~~ of the claims under 33-2-1365, on or before a date the liquidator ~~shall-specify~~ specifies in the notice. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. All claimants have a duty to keep the liquidator informed of any changes of address.

(3) (a) Notice under subsection (1) to insurance producers of the insurer and to potential claimants who are policyholders must include, when applicable, notice that coverage by state guaranty associations may be available for all or part of policy benefits in accordance with applicable state guaranty laws.

(b) The liquidator shall promptly provide to the guaranty associations information concerning the identities and addresses of the policyholders and their policy coverages as is within the liquidator's possession or control and shall otherwise cooperate with guaranty associations to assist them in providing to the policyholders timely notice of the guaranty associations' coverage of policy benefits, including coverage of claims and continuation or termination of coverages.

~~(3)(4)~~ (4) If notice is given in accordance with this

section, the distribution of assets of the insurer under this part ~~shall--be~~ is conclusive with respect to all claimants, whether or not they received notice."

Section 53. Section 33-10-105, MCA, is amended to read:

"33-10-105. General powers and duties. (1) The association ~~shall~~:

(a) (i) ~~is~~ be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency or before the policy expiration date if less than 30 days after the determination or before the insured replaces the policy or causes its cancellation if ~~he~~ the insured does so within 30 days of the determination;

(ii) ~~but-such--obligation--shall--include~~ is obligated under subsection (1)(a)(i) only for that amount of each covered claim which that is in excess of \$100 and is less than \$300,000, except that:

(A) the association shall pay an amount not exceeding \$10,000 per policy for a covered claim for the return of unearned premium; and

(B) the association shall pay the full amount of any covered claim arising out of a workers' compensation policy; and

(iii) ~~in--no--event--shall--the--association--be~~ is not obligated to a policyholder or claimant in an amount in

1 excess of the obligation of the insolvent insurer under the
2 policy from which the claim arises;

3 (b) be-deemed is considered the insurer to the extent
4 of its obligation on the covered claims and to such that
5 extent ~~shall have~~ has all rights, duties, and obligations of
6 the insolvent insurer as if the insurer had not become
7 insolvent;

8 (c) shall investigate claims brought against the
9 association and adjust, compromise, settle, and pay covered
10 claims to the extent of the association's obligation and
11 deny all other claims and may review settlements, releases,
12 and judgments to which the insolvent insurer or its insureds
13 were parties to determine the extent to which such the
14 settlements, releases, and judgments may be properly
15 contested;

16 (d) shall notify such persons as the commissioner
17 directs under 33-10-109(2)(a);

18 (e) shall handle claims through its employees or
19 through one or more insurers or other persons designated as
20 servicing facilities. Designation of a servicing facility is
21 subject to the approval of the commissioner, but such the
22 designation may be declined by a member insurer.

23 (f) shall reimburse each servicing facility for
24 obligations of the association paid by the facility and for
25 expenses incurred by the facility while handling claims on

1 behalf of the association and shall pay the other expenses
2 of the association authorized by this part.

3 (2) The association may:

4 (a) employ or retain such persons as are necessary to
5 handle claims and perform other duties of the association;

6 (b) borrow funds necessary to effect the purposes of
7 this part in accord with the plan of operation;

8 (c) sue or be sued;

9 (d) negotiate and become a party to such contracts as
10 are necessary to carry out the purpose of this part;

11 (e) perform such other acts as are necessary or proper
12 to effectuate the purpose of this part;

13 (f) refund to the member insurers in proportion to the
14 contribution of each member insurer to the association that
15 amount by which the assets of the association exceed the
16 liabilities, if, at the end of any calendar year, the board
17 of directors finds that the assets of the association exceed
18 the liabilities of the association as estimated by the board
19 of directors for the coming year."

20 **Section 54.** Section 33-10-111, MCA, is amended to read:

21 **"33-10-111. Stay of proceedings -- reopening of default**
22 **judgments.** (1) All proceedings in which the insolvent
23 insurer is a party or is obligated to defend a party in any
24 court in this state ~~shall~~ must be stayed for ~~60-days~~ 6
25 months from the date the insolvency is determined or an

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ancillary proceeding is instituted in the state, whichever is later, or must be stayed for any additional time as may be determined by the court in order to permit proper defense by the association of all pending causes of action.

(2) As to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of such the insured may apply to have such the judgment, order, decision, verdict, or finding set aside by the same court or administrator that made such the judgment, order, decision, verdict, or finding and ~~shall~~ must be permitted to defend against such the claim on the merits."

Section 55. Section 33-10-114, MCA, is amended to read:

"33-10-114. Claims -- effect as to insured and receiver. (1) Any person recovering under this part ~~shall-be~~ deemed is considered to have assigned ~~his~~ the person's rights under the policy to the association to the extent of ~~his~~ the person's recovery from the association. Every insured or claimant seeking the protection of this part shall cooperate with the association to the same extent as such that the person would have been required to cooperate with the insolvent insurer. The association ~~shall~~ does not have ~~no a~~ cause of action against the insured of the insolvent insurer for any sums it has paid out except such

causes of action ~~as that~~ the insolvent insurer would have had if ~~such the~~ sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association ~~shall~~ may not operate to reduce the liability of ~~insured's~~ insureds to the receiver, liquidator, or statutory successor for unpaid assessments.

(2) The association has the right to recover from the following persons the amount of any "covered claim" paid on behalf of the person pursuant to this part:

(a) any insured whose net worth, on December 31 of the year preceding the date the insurer becomes an insolvent insurer, exceeds \$50 million and whose liability obligations to other persons are satisfied in whole or in part by payments made under this part; and

(b) any person who is an affiliate of the insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this part.

(2)(3) The receiver, liquidator, or statutory successor of an insolvent insurer ~~shall-be~~ is bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such the claims priority equal to that which the claimant would have been entitled in the absence of this part against

the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims ~~shall~~ must be accorded the same priority as the liquidator's expenses.

~~(3)~~(4) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer."

Section 56. Section 33-10-201, MCA, is amended to read:

"33-10-201. Short title, purpose, scope, and construction. (1) This part shall be known and may be cited as the "Montana Life and Health Insurance Guaranty Association Act".

(2) The purpose of this part is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment of the insurer issuing ~~such~~ the policies or contracts.

(3) To provide this protection:

(a) an association of insurers is created to enable the guaranty of payment of benefits and of continuation of

coverages;

(b) members of the association are subject to assessment to provide funds to carry out the purpose of this part; and

(c) the association is authorized to assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments.

(4) This part ~~shall--apply~~ applies to direct life insurance--policies,--health--insurance--policies,--annuity contracts,--and--contracts--supplemental--to--life--and--health insurance-policies-and-annuity-contracts-issued-by--persons authorized--to-transact-insurance-in-this-state-at-any-time, nongroup life, health, annuity, and supplemental policies or contracts, to certificates under direct group policies and contracts, and to unallocated annuity contracts issued by member insurers, except as limited by this part. Annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement agreements, lottery contracts, and any immediate or deferred annuity contracts.

(5) This part ~~shall--provide~~ provides coverage for covered policies:

(a) to persons who are owners of or certificate holders

under such covered policies, and who:

(i) are residents; or

(ii) are not residents, but only under all of the following conditions:

(A) the insurers that issued the policies are domiciled in this state;

(B) the insurers have not held a license or certificate of authority in the state in which the persons reside;

(C) the state has an association similar to the association created under this part; and

(D) the persons are not eligible for coverage by that association; and

(b) to persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under subsection (5)(a).

(6) This part ~~shall~~ may DOES not apply to:

(a) any such policies or contracts or any part of such the policies or contracts under which the risk is borne by the policyholder;

(b) any such policy or contract or part thereof of the policy or contract assumed by the impaired insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued;

(c) any portion of a policy or contract to the extent

that the rate of interest on which it is based:

(i) averaged over the period of 4 years prior to the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting 2 percentage points from Moody's corporate bond yield average averaged for that same 4-year period or for the lesser period if the policy or contract was issued less than 4 years before the association became obligated; and

(ii) on and after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting 3 percentage points from Moody's corporate bond yield average as is most recently available;

(d) any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or similar entity under:

(i) a multiple employer welfare arrangement, as defined in section 514 of the Employee Retirement Income Security Act of 1974, as amended;

(ii) a minimum premium group insurance plan;

(iii) a stop-loss group insurance plan; or

(iv) an administrative services only contract;

(e) any portion of a policy or contract to the extent that it provides dividends or experience rating credits or provides that any fees or allowances be paid to any person, including the policy or contract holder, in connection with the service to or administration of the policy or contract;

(f) any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(g) any unallocated annuity contract issued to an employee benefit plan that is protected under the federal pension benefit guaranty corporation; and

(h) any portion of any unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a government lottery.

(7) This part ~~shall~~ must be liberally construed to effect the purpose under subsections (2) and (3), which ~~shall~~ constitute an aid and guide to interpretation.

(8) ~~Nothing--in--this~~ This part ~~shall~~ may not be construed to reduce the liability for unpaid assessments of the insureds of an impaired insurer operating under a plan with assessment liability."

Section 57. Section 33-10-202, MCA, is amended to read:

"33-10-202. Definitions. As used in this part, the following definitions apply:

(1) "Account" means any of the three accounts created under 33-10-203.

(2) "Association" means the Montana life and health insurance guaranty association created under 33-10-203.

(3) "Contractual obligation" means any obligation under covered policies.

(4) "Covered policy" means any policy or contract within the scope of this part under subsections (4) through (6) of 33-10-201.

(5) "Impaired insurer" means:

(a) an insurer which after July 1, 1974, becomes insolvent and is placed under a final order of liquidation, rehabilitation, or supervision by a court of competent jurisdiction; or

(b) an insurer deemed considered by the commissioner after July 1, 1974, to be unable or potentially unable to fulfill its contractual obligations.

(6) "Member insurer" means any person authorized to transact in this state any kind of insurance to which this part applies under subsections (4) and (6) of 33-10-201.

(7) "Person" means any individual, corporation, partnership, association, or voluntary organization.

(8) "Premiums" means direct gross insurance premiums

and annuity considerations written on covered policies, less return premiums and considerations thereon on premiums and dividends paid or credited to policyholders on such the direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers. As used in 33-10-227, "premiums" are those for the calendar year preceding the determination of impairment.

(9) "Resident" means any person who resides in this state at the time the impairment is determined and to whom contractual obligations are owed.

(10) "Unallocated annuity contract" means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of annuity benefits guaranteed to an individual by the insurer under the contract or certificate."

Section 58. Section 33-10-203, MCA, is amended to read:

"33-10-203. Creation of the association -- accounts -- supervision by commissioner. (1) There is created a nonprofit legal entity to be known as the Montana life and health insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under 33-10-216 and shall exercise its powers through a board of directors

established under 33-10-204.

(2) For purposes of administration and assessment, the association shall maintain three two accounts:

(a) the health insurance account; and

(b) the life insurance and annuity account that includes the following subaccounts --and

~~(c) --the annuity account;~~

(i) the life insurance account;

(ii) the annuity account; and

(iii) the unallocated annuity account that must include unallocated annuity contracts qualified under section 403(b) of the Internal Revenue Code.

(3) The association ~~shall come is~~ under the immediate supervision of the commissioner and ~~shall be is~~ subject to the applicable provisions of the insurance laws of this state. Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association."

Section 59. Section 33-10-210, MCA, is amended to read:

"33-10-210. Unfair trade practice -- notice to policyholders. (1) It ~~shall be is~~ a prohibited unfair trade practice for any person to make use in any manner of the protection afforded by this part in the sale of insurance.

(2) Within 180 days after October 1, 1993, the association shall prepare a summary document, complying with

subsection (3) and describing the general purposes and current limitations of this part. The document must be submitted to the commissioner for approval. Sixty days after receiving approval, an insurer may not deliver a policy or contract described in 33-10-201(4) to a policy or contract holder unless the document is delivered to the policy or contract holder prior to or at the time of delivery of the policy or contract, unless subsection (4) applies. The document must be available upon request by a policyholder. The distribution, delivery, contents, or interpretation of this document does not mean that either the policy or the contract or the holder of the policy or contract would be covered in the event of the impairment or insolvency of a member insurer. The description document must be revised by the association as amendments to this part may require. Failure to receive this document does not give the policyholder, contract holder, certificate holder, or insured any greater rights than those stated in this part.

(3) The document prepared under subsection (2) must contain a clear and conspicuous disclaimer on its face. The commissioner shall promulgate a rule establishing the form and content of the disclaimer. The disclaimer must:

(a) state the name and address of the life and health insurance guaranty association and insurance department;

(b) prominently warn the policy or contract holder that

the life and health insurance guaranty association may not cover the policy or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in the state;

(c) state that the insurer and its insurance producers are prohibited by law from using the existence of the life and health insurance guaranty association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

(d) emphasize that the policy or contract holder should not rely on coverage under the life and health insurance guaranty association when selecting an insurer;

(e) provide other information as directed by the commissioner.

(4) An insurer or insurance producer may not deliver a policy or contract described in 33-10-201(4) and excluded under 33-10-201(6)(a) from coverage under this part unless the insurer or insurance producer, prior to or at the time of delivery, gives the policy or contract holder a separate written notice that clearly and conspicuously discloses that the policy or contract is not covered by the life and health insurance guaranty association.

(5) The commissioner shall by rule specify the form and content of the notice required under subsection (4)."

Section 60. Section 33-10-217, MCA, is amended to read:

*33-10-217. Prevention of insolvencies or impairments.

(1) To aid in the detection and prevention of insurer insolvencies or impairments the board of directors is--given the following powers and duties, the commissioner shall:

(a) (i) notify the commissioners of all the other states, the territories of the United States, and the District of Columbia when the commissioner takes any of the following actions against a member insurer:

(A) the revocation of a license;

(B) the suspension of a license; or

(C) the issuance of any formal order that the company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyholders or creditors;

(ii) mail the notice to all commissioners within 30 days following the action taken or the date on which the action occurs;

(b) report to the board of directors when the commissioner has taken any of the actions set forth in subsection (1)(a) or has received a report from any other commissioner indicating that an action has been taken in another state. The report to the board of directors must contain all significant details of the action taken or the

report received from another commissioner.

(c) report to the board of directors when the commissioner has reasonable cause to believe from any examination, whether completed or in process, of any member company that the company may be an impaired or insolvent insurer; and

(d) furnish to the board of directors the national association of insurance commissioners' insurance regulatory information system (IRIS) ratios and listings of companies not included in the ratios developed by the national association of insurance commissioners. The board of directors may use the information contained in the ratios and listings in carrying out its duties and responsibilities under this section. The report and the information contained in the ratios and listings must be kept confidential by the board of directors until the time it is made public by the commissioner or other lawful authority.

(2) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the commissioner's duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this state.

{+}(3) The board of directors shall, upon majority vote, notify the commissioner of any information indicating

1 any member insurer may be unable or potentially unable to
2 fulfill its contractual obligations.

3 {2}(4) The board of directors may, upon majority vote,
4 request that the commissioner order an examination of any
5 member insurer which the board in good faith believes may be
6 unable or potentially unable to fulfill its contractual
7 obligations.

8 {3}(5) The board of directors may, upon majority vote,
9 make reports and recommendations to the commissioner upon
10 any matter germane to the solvency, liquidation,
11 rehabilitation, or supervision of any member insurer. Such
12 The reports and recommendations ~~shall~~ are not be considered
13 public documents.

14 {4}(6) The board of directors may, upon majority vote,
15 make recommendations to the commissioner for the detection
16 and prevention of insurer impairments.

17 {5}(7) The board of directors shall, at the conclusion
18 of any insurer impairment in which the association carried
19 out its duties under this part or exercised any of its
20 powers under this part, prepare a report on the history and
21 causes of such the impairment, based on the information
22 available to the association, and submit such the report to
23 the commissioner. The board of directors shall cooperate
24 with the boards of directors of guaranty associations in
25 other states in preparing a report on the history and causes

1 of insolvency of a particular insurer and may adopt by
2 reference any report prepared by other associations."

3 **Section 61.** Section 33-10-218, MCA, is amended to read:

4 "33-10-218. **Examination by commissioner -- cost.** (1)
5 The commissioner may conduct the examination requested by
6 the board pursuant to 33-10-217{2}(4). The examination may
7 be conducted as a national association of insurance
8 commissioners examination or may be conducted by such
9 persons as whom the commissioner designates. The cost of
10 such the examination ~~shall~~ must be paid by the association,
11 and the examination report ~~shall~~ must be treated as are
12 other examination reports.

13 (2) ~~In-no-event-shall-such~~ The examination report may
14 not be released to the board of directors of the association
15 prior to its release to the public, but this ~~shall~~ may not
16 excuse the commissioner from ~~his~~ the obligation to comply
17 with subsection (4). The commissioner shall notify the board
18 of directors when the examination is completed.

19 (3) The request for an examination ~~shall~~ must be kept
20 on file by the commissioner, but it ~~shall~~ may not be open to
21 public inspection prior to the release of the examination
22 report to the public and ~~shall~~ must be released at that time
23 only if the examination discloses that the examined insurer
24 is unable or potentially unable to meet its contractual
25 obligations.

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(4) The commissioner shall report to the board of directors when he the commissioner has reasonable cause to believe that any member insurer examined at the request of the board of directors may be unable or potentially unable to fulfill its contractual obligations."

Section 62. Section 33-10-224, MCA, is amended to read:

"33-10-224. **Extent of liability.** The benefits for which the association may become liable may not exceed the lesser of:

(1) the contractual obligations of the impaired insurer for which the association insurer becomes or may would have become liable shall-be-as-great-as-but-no-greater-than-the contractual-obligations-of-the-impaired-insurer--would--have been-in-the-absence-of-an-impairment-unless-such-obligations are---reduced---as---permitted---by---33-10-220(3),--but--the association-shall-have--no--liability if it were not an impaired or insolvent insurer; or

(2) (a) with respect to any portion-of-a-covered-policy to--the--extent--that--the-death-benefit-coverage-on-any one life, regardless of the number of policies or contracts:

(i) exceeds-an-aggregate-of \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash surrender and net cash withdrawal values for life insurance;

(ii) \$100,000 in health insurance benefits, including any net cash surrender and net cash withdrawal values;

(iii) \$100,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(b) with respect to each individual participating in a governmental retirement plan established under section 401, 403(b), or 457 of the Internal Revenue Code and covered by an unallocated annuity contract or with respect to the beneficiaries of each individual, if deceased, in the aggregate, \$100,000 in present value annuity benefits, including net cash surrender and net cash withdrawal values. However, the association is not liable to expend more than \$300,000 in the aggregate with respect to any one individual under subsection (2)(a) and this subsection.

(c) with respect to any one contract holder covered by any unallocated annuity contract not included in subsection (2)(b), \$5 million in benefits, irrespective of the number of contracts held by that contract holder."

Section 63. Section 33-11-103, MCA, is amended to read:

"33-11-103. **Chartering -- licensing -- plan of operation.** (1) A risk retention group seeking to be chartered in this state must be chartered and licensed to write only as-a casualty insurer insurance pursuant to the insurance laws of this state and, except as provided in this part, must shall comply with all of the laws, rules, regulations, and requirements applicable to such the insurers chartered and authorized in this state, including

33-11-104, to the extent such that the requirements are not a limitation on laws, rules, regulations, or requirements of this state. Before it may offer insurance in any state, the risk retention group shall also submit for approval to the commissioner a plan of operation or a feasibility study and revisions of such the plan or study if the group intends to offer any additional lines of liability insurance.

(2) At the time of filing its application for charter, the risk retention group shall provide to the commissioner in summary form the following information:

(a) the identity of the initial members of the risk retention group;

(b) the identity of those individuals who organized the risk retention group or who will provide administrative services or otherwise influence or control the activities of the risk retention group;

(c) the amount and nature of initial capitalization;

(d) the coverages to be afforded; and

(e) the states in which the risk retention group intends to operate.

(3) Upon receipt of the information required under subsection (2), the commissioner shall forward the information to the national association of insurance commissioners. Providing this information to the national association of insurance commissioners does not satisfy the

requirements of 33-11-104 or any other section of this chapter.

(4) All risk retention groups chartered in this state shall file with the department and the national association of insurance commissioners an annual statement in a form prescribed by the national association of insurance commissioners and in diskette form, if required by the commissioner, and completed in accordance with its instructions and the national association of insurance commissioners' accounting practices and procedures manual."

Section 64. Section 33-11-104, MCA, is amended to read:

"33-11-104. Risk retention groups not chartered in this state. A risk retention group chartered in a state other than this state and seeking to do business as a risk retention group in this state must observe and abide by the laws of this state as follows:

(1) Before offering insurance in this state, a risk retention group shall submit to the commissioner:

(a) a statement identifying the state or states where the risk retention group is chartered and authorized as a casualty insurer, date of chartering, its principal place of business, and such other information, including information on its membership, as the commissioner requires to verify that the risk retention group is qualified under 33-11-102(7);

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1 (b) a copy of its plan of operation or a feasibility
 2 study and revisions of ~~such~~ the plan or study submitted to
 3 its state of domicile. However, this provision relating to
 4 the submission of a plan of operation or a feasibility study
 5 does not apply with respect to any line or classification of
 6 liability insurance that was defined in the federal Product
 7 Liability Risk Retention Act of 1981 (15 U.S.C. 3901 through
 8 3904) before it was amended by P.L. 99-563, approved on
 9 October 27, 1986, and that was offered before that date by a
 10 risk retention group that had been chartered and operated
 11 for not less than 3 years before that date; and

12 (c) a statement of registration that designates the
 13 commissioner as its agent for the purpose of receiving
 14 service of legal documents or process.

15 (2) A risk retention group doing business in this state
 16 shall submit to the commissioner:

17 (a) a copy of the group's financial statement submitted
 18 to its state of domicile, which must be certified by an
 19 independent public accountant and contain a statement of
 20 opinion on loss and loss adjustment expense reserves made by
 21 a member of the American academy of actuaries or by a
 22 qualified loss reserve specialist under criteria established
 23 by the national association of insurance commissioners;

24 (b) a copy of each examination of the risk retention
 25 group as certified by the insurance regulatory official of

1 the state in which the examination was conducted or public
 2 official conducting the examination;

3 (c) upon request by the commissioner, a copy of any
 4 audit performed with respect to the risk retention group;
 5 and

6 (d) ~~such~~ information as may be required to verify the
 7 group's continuing qualification as a risk retention group
 8 under 33-11-102(7).

9 (3) (a) ~~All-premiums--paid--for--coverage--within--this~~
 10 ~~state--to~~ Each risk retention groups-are-subject-to-taxation
 11 ~~at-the-same-rate-and-to-the-same~~ group is liable for the
 12 payment of premium taxes and taxes on premiums of direct
 13 business for risks resident or located within this state and
 14 shall report to the commissioner the net premiums written
 15 for risks resident or located within this state. The risk
 16 retention group is subject to taxation and any applicable
 17 interest, fines, and penalties for nonpayment that apply to
 18 foreign admitted insurers.

19 (b) To the extent that an insurance producer is used,
 20 he the insurance producer shall report and-pay-the-taxes-for
 21 the--premiums--for-risks-that-he-has to the commissioner the
 22 premiums of direct business for risks resident or located
 23 within this state that the licensees have placed with or on
 24 behalf of a risk retention group not chartered in this
 25 state.

(c) To the extent that an insurance producer is not used or fails to pay the tax, each risk retention group shall pay the tax for risks insured within the state. Further, each risk retention group shall report all premiums paid to it for risks insured within the state, the insurance producer shall keep a complete and separate record of all policies procured from each risk retention group. The record is open to examination by the commissioner, as provided in 33-1-403. The records must, for each policy and each kind of insurance provided under the policy, include the limit of liability, the time period covered, the effective date, the name of the risk retention group that issued the policy, the gross premium charged, and the amount of return premiums, if any.

(4) Each risk retention group, its insurance producers, and its representatives shall comply with Title 33, chapter 18, part 2.

(5) Each risk retention group shall comply with the provisions of Title 33, chapter 18, part 2, regarding deceptive, false, or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding such the risk retention group's conduct, the injunction must be obtained from a court of competent jurisdiction.

(6) Each risk retention group shall submit to an examination by the commissioner to determine its financial

condition if the insurance regulatory official of the jurisdiction where the group is chartered has not initiated an examination or does not initiate an examination within 60 days after a request by the commissioner. The examination must be coordinated to avoid unjustified repetition and be conducted in an expeditious manner in accordance with the national association of insurance commissioners examiners handbook.

(7) Each policy issued by a risk retention group must contain, in 10-point type on the front page and the declaration page, the following notice:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group."

(8) The following acts by a risk retention group are prohibited:

(a) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the group; and

(b) the solicitation or sale of insurance by or operation of a risk retention group that is in a hazardous financial condition or is financially impaired.

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(9) A risk retention group is not allowed to do business in this state if an insurer is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurers.

(10) A risk retention group may not offer insurance policy coverage declared unlawful by the Montana supreme court.

(11) A risk retention group not chartered in this state and doing business in this state must comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by the insurance regulatory official of any state if there has been a finding of financial impairment after an examination under subsection (6)."

Section 65. Section 33-11-105, MCA, is amended to read:

"33-11-105. **Compulsory associations.** (1) A risk retention group may not join or contribute financially to any insurance insolvency guaranty fund or similar mechanism in this state. In addition, a risk retention group or its insureds may not receive any benefit from any such guaranty fund for claims arising out of the operations of the risk retention group.

(2) A risk retention group shall participate in this state's joint underwriting associations, mandatory liability

pools, and similar mechanisms ~~as--provided--by--Title--33, chapter-8--{now-terminated}.~~

(3) When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this state or from a risk retention group, the risks, wherever resident or located, may not be covered by any insurance guaranty fund or similar mechanism in this state.

(4) When a purchasing group obtains insurance covering its members' risks from an authorized insurer, only risks resident or located in this state may be covered by the state guaranty fund, subject to Title 33, chapter 10, part 1."

Section 66. Section 33-11-108, MCA, is amended to read:

"33-11-108. **Notice and registration requirements of purchasing groups.** (1) A purchasing group that intends to do business in this state shall furnish notice to the commissioner that:

(a) identifies the state where the group is domiciled and all other states in which the group intends to do business;

(b) specifies the lines and classifications of liability insurance that the purchasing group intends to purchase;

(c) identifies the insurer from which the purchasing group intends to purchase its insurance and the domicile of

1 the insurer;

2 (d) identifies the Montana-licensed insurance producer
3 or Montana-licensed surplus insurance lines producer through
4 which the purchasing group intends to place its business;

5 (e) identifies the principal place of business of the
6 purchasing group; and

7 (f) provides information required by the commissioner
8 to verify that the purchasing group is qualified under
9 33-11-102(6).

10 (2) The purchasing group shall register with and
11 designate the commissioner as its agent solely for the
12 purpose of receiving service of legal documents or process.
13 However, such the requirements do not apply in the case of a
14 purchasing group:

15 (a) (i) that was domiciled before April 2, 1986, in any
16 state of the United States; and

17 (ii) that was domiciled on and after October 27, 1986,
18 in any state of the United States;

19 (b) (i) that, before October 27, 1986, purchased
20 insurance from an insurer licensed in any state; and

21 (ii) that, since October 27, 1986, purchased its
22 insurance from an insurer licensed in any state;

23 (c) that was a purchasing group under the requirements
24 of the federal Product Liability Risk Retention Act of 1981
25 (15 U.S.C. 3901 through 3904) before it was amended by P.L.

1 99-563, approved on October 27, 1986; and

2 (d) that does not purchase insurance that was not
3 authorized for purposes of an exemption under the federal
4 Product Liability Risk Retention Act of 1981, as in effect
5 before October 27, 1986."

6 **Section 67.** Section 33-11-109, MCA, is amended to read:

7 **"33-11-109. Restriction on insurance purchased by**
8 **purchasing groups.** (1) A purchasing group may not purchase
9 insurance from a risk retention group that is not chartered
10 in a state or from an insurer not authorized in the state
11 where the purchasing group is located, unless the purchase
12 is effected through a licensed insurance producer ~~or broker~~
13 acting pursuant to the surplus lines laws and regulations of
14 that state.

15 (2) For purposes of subsection (1), the state where a
16 purchasing group is located is each state where a member of
17 the purchasing group has a risk resident, located, or to be
18 performed.

19 (3) A purchasing group that obtains liability insurance
20 from an insurer not admitted in this state or from a risk
21 retention group shall inform each of the members of the
22 group who have a risk resident or located in this state that
23 the risk is not protected by an insurance insolvency
24 guaranty fund in this state and that the insurer or risk
25 retention group may not be subject to all insurance laws and

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1 regulations of this state.

2 (4) A purchasing group may not purchase insurance that
 3 provides for a deductible or self-insured retention
 4 applicable to the group as a whole. Coverage may provide for
 5 a deductible or self-insured retention applicable to
 6 individual members.

7 (5) Purchases of insurance by purchasing groups are
 8 subject to the same standards regarding aggregate limits
 9 that are applicable to all purchases of group insurance."

10 **Section 68.** Section 33-22-804, MCA, is amended to read:

11 **"33-22-804. Corporate powers of association --**
 12 **examination of books.** (1) Any association formed for the
 13 purposes of this part may hold title to property, may enter
 14 into contracts, and may limit the liability of its members
 15 to their respective pro rata shares of the liability of such
 16 the association. ~~Any-such~~ An association may sue and be sued
 17 in its associate name and for such that purpose only ~~shall~~
 18 must be treated as a domestic corporation. Service of
 19 process against such the association made upon a managing
 20 insurance producer, any member ~~thereof of the association,~~
 21 or any insurance producer authorized by appointment to
 22 receive service of process ~~shall-have~~ has the same force and
 23 effect as if such service had been made upon all members of
 24 the association.

25 (2) Such The association's books and records ~~shall~~ must

1 also be subject to examination under the provisions of
 2 33-1-315, 33-1-316, and 33-1-401, 33-1-402, 33-1-411,
 3 through 33-1-413, and [section 32], either separately or
 4 concurrently with examination of any of its member
 5 insurers."

6 **SECTION 69.** SECTION 33-10-227, MCA, IS AMENDED TO READ:

7 **"33-10-227. Assessments -- abatement -- basis for**
 8 **ratesetting.** (1) For the purpose of providing the funds
 9 necessary to carry out the powers and duties of the
 10 association, the board of directors shall assess the member
 11 insurers, separately for each account, at such the times and
 12 for such the amounts as the board finds necessary. The board
 13 shall collect the assessments after 30 days' written notice
 14 to the member insurers before payment is due.

15 (2) There ~~shall--be~~ are two classes of assessments, as
 16 follows:

17 (a) Class A assessments ~~shall~~ must be made for the
 18 purpose of meeting administrative costs and other general
 19 expenses not related to a particular impaired insurer.

20 (b) Class B assessments ~~shall~~ must be made to the
 21 extent necessary to carry out the powers and duties of the
 22 association under 33-10-219 and 33-10-220(1) with regard to
 23 an impaired insurer.

24 (3) (a) The amount of any Class A assessment for each
 25 account ~~shall~~ must be determined by the board. The amount of

1 any Class B assessment ~~shall~~ must be divided among the
 2 accounts in the proportion that the premiums received by the
 3 impaired insurer on the policies covered by each account
 4 bear to the premiums received by such the insurer on all
 5 covered policies.

6 (b) Class B assessments against member insurers for
 7 each account ~~shall~~ must be in the proportion that the
 8 premiums received on business in this state by each assessed
 9 member insurer on policies covered by each account bear to
 10 such the premiums received on business in this state by all
 11 assessed member insurers.

12 (c) Assessments for funds to meet the requirements of
 13 the association with respect to an impaired insurer ~~shall~~
 14 may not be made until necessary to implement the purposes of
 15 this part. Classification of assessments under subsection
 16 (2) and computation of assessments under this subsection
 17 ~~shall~~ must be made with a reasonable degree of accuracy,
 18 recognizing that exact determinations may not always be
 19 possible.

20 (4) The association may abate or defer, in whole or in
 21 part, the assessment of a member insurer if, in the opinion
 22 of the board, payment of the assessment would endanger the
 23 ability of the member insurer to fulfill its contractual
 24 obligations. The total of all assessments upon a member
 25 insurer for each account ~~shall~~ may not in any one calendar

1 year exceed 2% of such the insurer's premiums in this state
 2 on the policies covered by the account.

3 (5) In the event an assessment against a member insurer
 4 is abated or deferred, in whole or in part, because of the
 5 limitations set forth in subsection (4), the amount by which
 6 such the assessment is abated or deferred ~~shall~~ must be
 7 assessed against the other member insurers in a manner
 8 consistent with the basis for assessments set forth in this
 9 section. If the maximum assessment, together with the other
 10 assets of the association in either account, does not
 11 provide in any one year in either account an amount
 12 sufficient to carry out the responsibilities of the
 13 association, the necessary additional funds ~~shall~~ must be
 14 assessed as soon thereafter as permitted by this part.

15 (6) If a 1% assessment for any subaccount of the life
 16 insurance account and the annuity account in any 1 year does
 17 not provide an amount sufficient to carry out the
 18 responsibilities of the association, then pursuant to
 19 subsection (3)(b), the board shall assess all subaccounts of
 20 the life insurance account and the annuity account for the
 21 necessary additional amount, subject to the maximum
 22 assessment stated in subsection (4).

23 ~~(6)(7)~~ The board may, by an equitable method as
 24 established in the plan of operation, refund to member
 25 insurers, in proportion to the contribution of each insurer

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to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

~~(7)~~(8) It ~~shall be~~ is proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this part, to consider the amount reasonably necessary to meet its assessment obligations under this part.

~~(8)~~(9) The association shall issue to each insurer paying an assessment under this part a certificate of contribution, in a form prescribed by the commissioner, for the amount ~~so~~ paid. All outstanding certificates ~~shall~~ must be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such that form and for such the amount, if any, and period of time as that the commissioner may approve."

SECTION 70. SECTION 33-10-230, MCA, IS AMENDED TO READ:

"33-10-230. Tax -- writeoffs of certificates of

contribution. (1) Unless a longer period has been allowed by the commissioner, a member insurer shall at its option have the right to show a certificate of contribution for a Class B assessment only as an asset in the form approved by the commissioner pursuant to 33-10-227~~(8)~~(9), at percentages of the original face amount approved by the commissioner, for calendar years as follows:

(a) 100% for calendar year of issuance;

(b) 80% for the first calendar year after year of issuance;

(c) 60% for second calendar year after year of issuance;

(d) 40% for third calendar year after year of issuance;

(e) 20% for fourth calendar year after year of issuance.

(2) The insurer may offset the amount written off by it in the calendar year under subsection (1) above against its premium tax liability to this state accrued with respect to business transacted in such the calendar year.

(3) Any sums acquired by refund, pursuant to 33-10-227~~(6)~~(7), from the association which have therefore been written off by contributing insurers and offset against premium taxes as provided in subsection (2) above and are not then needed for purposes of this part ~~shall~~ must be paid by the association to the commissioner and ~~by him~~ deposited

1 by the commissioner with the state treasurer for credit to
2 the general fund of this state."

3 NEW SECTION. **Section 71. Repealer.** Sections 33-1-403,
4 33-1-412, 33-2-1205, and 33-10-229, MCA, are repealed.

5 NEW SECTION. **Section 72. Codification instruction.** (1)
6 [Sections 1 through 27] are intended to be codified as an
7 integral part of Title 33, and the provisions of Title 33
8 apply to [sections 1 through 27].

9 (2) [Sections 28 through 30] are intended to be
10 codified as an integral part of Title 33, chapter 2, part
11 12, and the provisions of Title 33, chapter 2, part 12,
12 apply to [sections 28 through 30].

13 (3) [Sections 31 through 33] are intended to be
14 codified as an integral part of Title 33, chapter 1, part 4,
15 and the provisions of Title 33, chapter 1, part 4, apply to
16 [sections 31 through 33].

17 (4) [Section 34] is intended to be codified as an
18 integral part of Title 33, chapter 11, and the provisions of
19 Title 33, chapter 11, apply to [section 34].

20 (5) [Sections 35 through 38] are intended to be
21 codified as an integral part of Title 33, chapter 2, part
22 13, and the provisions of Title 33, chapter 2, part 13,
23 apply to [sections 35 through 38].

24 (6) [Section 48] is intended to be codified as an
25 integral part of Title 33, chapter 2, part 11, and the

1 provisions of Title 33, chapter 2, part 11, apply to
2 [section 48].

-End-